

**THE EFFICACY OF THE NIGERIAN HUMAN RIGHTS VIOLATION INVESTIGATION
COMMISSION (OPUTA COMMISSION) IN THE PROCESS OF TRANSITIONAL
JUSTICE (1966–1999)**

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Submitted in (partial) fulfilment of the requirements for the

Degree of Doctor of Laws

Faculty of Law

University of South Africa

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November 2017

DECLARATION

I declare that "Efficacy of the Nigerian Human Rights Violation Investigation Commission (Oputa Commission) in the Process of Transitional Justice (1966–1999)" is my own work, that it has not been submitted for any degree or examination in any other university, and that all the sources I have used or quoted have been indicated and acknowledged by complete references.

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ACKNOWLEDGEMENTS

Writing this thesis has been very demanding, challenging and time-consuming, but also remarkable, informative and rewarding. Nevertheless, it feels great to have finally completed my LLD thesis and I am now looking forward to a nice relaxing period to recover. There have been advantages and drawbacks to this study, with a limited amount of earlier research conducted in this area. And even though I faced serious trouble, I was lucky that the research was in my favour and this made it both challenging and interesting.

I would like to thank my supervisor, Jeremy Julian Sarkin, Professor of Law at the University of South Africa, who has patiently guided me through this thesis, helped me through difficult times faced during the entire process, and motivated me to work hard and not abandon the research. Professor Sarkin's in-depth knowledge of international law and transitional justice was invaluable in guiding me through the research and analysis of the thesis. As a supervisor he is meticulous and paid great attention to details. No doubt I would not have completed this thesis without Professor Sarkin's support, guidance and perseverance.

Furthermore, I would like to thank all my friends for sharing their perceptions and opinions with me, the Centre for Democracy & Development for giving me the opportunity to enrol for the LLD programme in the first place. Finally, I would like to thank my dear wife and children for their love and support as well as my parents for laying the foundation for my academic achievements.

ABSTRACT

The purpose of the efficacy of the Human Rights Violation Investigation Commission (Oputa Commission) in the Process of Transitional Justice (1966-1999) is to explore the range of political and human rights problems that confronted Nigeria from colonial times, exacerbated by military incursion into governance in 1966. As the colonial period laid the foundation for ethnic and religious politics, the period of military rule brought moral, physical and institutional decay to Nigeria.

The motivations of these military rulers were not driven by service to the country but personal gratification and accumulation of wealth. Corruption assumed pandemic proportions. Military leaders not only looted the coffers of the state but, like other dictators, their actions were above the law. They hounded, terrorised and jailed journalists, academics, human rights activists and all those who disagreed with them or their policies.

Attempts to deal with these various problems of governance, which resulted in cases of gross violation of human rights, led to the Human Rights Violation Investigation Commission (the Oputa Commission) being established with a broad mandate to investigate past abuse and reconcile the peoples of Nigeria, so that harmony could be restored.

The Oputa Commission, through its work, traversed the country and brought to light gory tales of past abuse in such a way that no one could deny they ever happened. The submissions received by the Commission revealed that all ethnic clusters or regional groups in Nigeria felt marginalised and cheated in federation. This general feeling of anger made the Commission's work towards the restoration of harmony in the country even more urgent and important.

The thesis will review Nigeria's role to assess whether the country during the period under review complied with its international human rights obligations. The thesis finally discusses the lessons from the Oputa Commission as a transitional justice mechanism for Nigerians, and perhaps other nations emerging from war and/or human rights violations. This is important, considering the challenges of unity and national development of the Nigerian State. A comparative

analysis of other countries with a history of authoritarianism and human rights violations will be made to evaluate whether the Oputa Commission achieved its mandate.

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CHAPTER ONE

INTRODUCTION

“Truth commissions have become routine; it has become a standard practice. You have a transition, and everybody immediately says we have to have a truth commission”.¹

1.1 Background to the study

In African societies, conflict resolution and peace building have long been a common phenomenon in antiquity²; perhaps what is new in contemporary debate is the efficacy of transitional justice in national development and classical democracy.³ This study therefore is an attempt to examine the nature of contention and contradictions of the Nigerian version of a Truth and Reconciliation Commission, known as the Nigerian Human Rights Violation Investigation Commission (Oputa Commission).⁴ This mechanism also investigates political and human rights problems that have confronted Nigeria since the military political incursion in 1966.⁵ This study is important because political and human rights challenges in the country have long been on the periphery of constructive dialogue about nation building⁶ and ethnic diversity. Political activists affirm that the military regime brought with it moral, physical and institutional decay in Nigeria.⁷

¹ BAXTER, V., 2002. *Empirical Research Methodologies of Transitional Justice Mechanism*. Stellenbosch, South Africa, 18-20.

² OLAOBA, O.A. 2005. *Traditional Approaches To Conflict Resolution in the South-West Zone of Nigeria*. *the Nigerian Army Quarterly Journal*, 1(1), 22-40. Also See UMARU, K.O. 2005. *Challenges of Conflict Management and Resolution in West Africa*. *the Nigerian Army Quarterly Journal*, 1(4), 391-404.

³ JOSEPH, A.R. 1999. *Democracy and Prebendal Politics in Nigeria: the Rise and Fall of the Second Republic*. Spectrum Books Ltd: Ibadan, 4. Also See ESHIET, G. 2009. *Transitional Justice and Its Implications For Women in Nigeria*. *Women's World*, 44, 17-35.

⁴ ODURO, F., 2012. *the Canadian Truth and Reconciliation Commission: Lessons From Comparable Experiences in Nigeria and Ghana*. *the Canadian Journal of Native Studies*, 32(2), 103-120.

⁵ KIEH, G.K. AND AGBESE, P.O. eds., 2004. *the Military and Politics in Africa: From Engagement To Democratic and Constitutional Control*. Ash Gate Publishing, Ltd. Also See ACHEBE, C., 2012. *There Was A Country: A Personal History of Biafra*. Penguin.

⁶ “Violations By the Police and Other Law Enforcement Agencies,” *Annual Report 1997*. Also See: *A Civil Liberties Organisation Report, 1999 On the State of Human Rights in Nigeria*. Civil Liberties Organisation: Lagos.

⁷ FALEYIMU, J.G., 2014. *Military Intervention in Nigerian Political System: Its Impact On*

Indeed, it has also been noted that the motivations of military rulers were not driven by service to the nation, but by personal gratification and accumulation of wealth.⁸ As a consequence, corruption became endemic in all regimes, leaving the country in a quagmire of human rights violations.⁹ In such situations therefore, the study affirms that there are a variety of transitional justice mechanisms that can help affected societies start afresh.¹⁰ In Nigeria, military leaders not only looted the treasures of the land,¹¹ but like other dictators worldwide, they were unable to draw a distinction between themselves and the state.¹² At the same time, their agents were seen to be above the law as they hounded, terrorised and jailed journalists, academics, human rights activists and all those who disagreed with their interests and policies.¹³ Like Kenya, the significance of institutional cleansing becomes inevitable, i.e., the transformation and improvement of these institutions through wide reaching reforms becomes one of the key cornerstones of an effective transitional justice process. As Grissen (1995) has written in his biography: “Military Intelligence held us in Apapa for two nights and then moved us to Security Service (SS) headquarters in Ikoyi, Lagos, for further questioning. At first our quarters were not crowded. But before our time was spent, 23 of us were sleeping in one room, on the floor on narrow mattresses”.¹⁴ Incidents like this one describe the nasty and brutal nature of Nigerian security apparatus.

Democratic Development (1993-1999). Also See, FRANK, E.O., & UKPERE, W.I. 2012. *the Impact of Military Rule On Democracy in Nigeria. Journal of Social Sciences*, 33(3), 285-292.

⁸ TOYIN, O.S., 2015. *the Impact of Military Coup D’etat On Political Development in Nigeria. International Journal of Business and Social Science*, 6(10), 194-202.

⁹ BELLO, A. AND ODUSOTE, A., 2013. *the Matrix of Bad Governance: Corruption and Insecurity in Nigeria. in Proceedings of the 46th Annual Conference of the Nigerian Association of Law Teachers Held Between the 22nd-26th April* (606-643).

¹⁰ KENYA HUMAN RIGHTS COMMISSION. *Transitional Justice in Kenya: A Toolkit For Training and Engagement*. 18.

¹¹ AGBESED. 2012. *Ibrahim Babangida: the Military, Politics and Power in Nigeria*. Adonis and Abbey Publishers: Ikeja.

¹² BEST, S.G. AND VIVEKANANDA, F., 1999. *the Nigerian Military, Militarism and the Crisis of Democracy in Nigeria. Scandinavian Journal of Development Alternatives and Area Studies*, 18, 25-46.

¹³ OLUKOTUN, A., 2004. *Repressive State and Resurgent Media Under Nigeria's Military Dictatorship, 1988-98 (Vol. 126)*. Nordic Africa Institute.

¹⁴ GRISSIN, L.V., 1995. *That We May Be One: the Autobiography of Nigerian Ambassador Jolly Tanko Yusuf*. William B. Eerdmans Pub Co: Grand Rapids.

Various attempts to deal with the problems of military rule as well as cases of gross violation of human rights led to the setting up of the Oputa Commission.¹⁵ The Commission had a broad mandate to investigate past rights violation, and reconcile the peoples of Nigeria with peace and progress.¹⁶ To achieve its mandate, the Commission traversed the country and brought home gory tales of past abuse that revealed that all ethnic clusters or regional groups in Nigeria felt marginalised and cheated in relation to the Nigerian federation project.¹⁷ The general feeling of anger made the Commission's work in Nigeria more urgent than ever.

The Oputa Commission received several reviews in journal articles. Some of these include Adeyemo (2013),¹⁸ Guaker (2009),¹⁹ Ikhariale (2008),²⁰ Yusuf (2007),²¹ Akhihiero (2001/2002)²² and Kukah (2011)²³ among others. This could be attributed to the indispensability of the findings and recommendations of the Commission, despite the ambush of the Supreme Court of Nigeria. Because of such intellectual productions, this research is the first doctoral study that focuses on the efficacy of the Nigerian Human Rights Violation Commission in the process of the transitional justice (1966–1999). No detailed study has been conducted on transitional justice in Nigeria. This research is also timely and the topic apt,

¹⁵ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286.

¹⁶ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed (Master's Thesis, the University of Bergen)*. Also See, PERRY, J., & SAYNDEE, T.D. 2015. *African Truth Commissions and Transitional Justice*. Lexington Books: Lanham.

¹⁷ AMNESTY INTERNATIONAL. *Nigeria, Time For Justice and Accountability*. London, UK: International Secretariat, 2000. Available <http://www.Amnesty.Org/En/Library/Info/Afr44/014/2000> (Accessed June 12, 2008).

¹⁸ ADEYEMO, D.D., 2013. *Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt?* Doctoral Dissertation, University of Western Cape.

¹⁹ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen. 1-51.

²⁰ IKHARIALE, M., 2004. *the Oputa Reports: An Unfinished Job*. [http://www.Nigerdeltacongress.Com/Oarticles/Oputa Reports. Htm](http://www.Nigerdeltacongress.Com/Oarticles/Oputa%20Reports.Htm). 1-4.

²¹ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286.

²² AKHIHIERO P., 2001/2002. *the Constitutionality and Powers of the Human Rights Violations Investigations Commission (Oputa Panel)*, Vol.7.No.1, *University of Benin Law Journal*, 116-135.

²³ KUKAH, M.H., 2011. *Witness To Justice: An Insider's Account of Nigeria's Truth Commission*. Book Craft: Ibadan.

because of the knowledge it offers in conflict and peace building studies, as well as the transitional justice system.

Additionally, this study discusses how other countries with a history of authoritarian and human rights violations have confronted their ugly past. Notably is South Africa with its Truth and Reconciliation Commission (TRC) which is arguably the continent's best known example of restorative justice, when it choose to offer perpetrators amnesty in exchange for full disclosure about their past crimes.²⁴ A comparative review of the transitional justice mechanism in other countries like the Kenya's Truth, Justice and Reconciliation Commission (TJRC), will therefore help to inform the evaluation of the Oputa Commission's work and mandate broadly. This is more compelling in countries undergoing a radical shift from repression to democracy, for the question of transitional justice presents, in a very conspicuous manner, the first real test for the establishment of real democracy and rule of law.²⁵

Casting a glance on Rwanda, there may be much that can be learnt from the Gacaca model, in what is an unquestionably difficult context in which to establish a new regime of rights and participation, the lessons it holds for grassroots approaches to transitional justice may not only be the result of its apparent positive potential, but of its problems too.²⁶ It is trite to posit that democracy as a process cannot be built on a culture of impunity where real questions of recent past human rights violations have not been addressed in Nigeria.²⁷ For a virile democracy to be established, past abuses must be addressed, and the ugly past exorcised.²⁸ There is no "one-size-fits-all" model for addressing

²⁴ KENYA HUMAN RIGHTS COMMISSION. *Transitional Justice in Kenya: A Toolkit For Training and Engagement*.44

²⁵ HAYNER, P.B., 2010. *Unspeakable Truths 2e: Transitional Justice and the Challenge of Truth Commissions*. Routledge: New York.

²⁶ LUNDY, P. AND MCGOVERN, M., 2008. *Whose Justice? Rethinking Transitional Justice From the Bottom Up*. *Journal of Law and Society*, 35(2), 265-292.

²⁷ FLETCHER, L.E., WEINSTEIN, H.M., & ROWEN, J. 2009. *Context, Timing and the dynamics of Transitional Justice: A Historical Perspective*. *Human Rights Quarterly*, 31(1), 163-220.

²⁸ FARLEY, M.K. 2008. *"Identity in Transition: Towards A Conceptualization of the Socio-Political Dynamics of the South African Truth and Reconciliation Commission"*, *Doctoral Dissertation*, University of Cape Town; ROSENBERG, T. 1999. *"Afterword: Confronting the Painful Past"*. in MEREDITH, M., 1999. *Coming to terms: South Africa's search for truth*. PublicAffairs.

past human rights violations.²⁹ Each country's unique history requires a tailor-made transitional justice process.³⁰ The method used by a particular country depends on its history and circumstance. However, it is important that the model a country adopts should recognise the worth and dignity of those who suffered gross abuse in the past and uphold rule of law; in other words, the process must have, as its twin objective, the need for justice and reconciliation of the people who were previously divided.³¹

To achieve justice, judicial institutions that are transparent and impartial must be established to deal with those who committed gross violation of human rights.³² Though courts are important and dispense justice, they cannot, however, impose reconciliation. In a cautionary tale however, there is also an under-examined feature that truth commissions have placed on the importance of commissioners and their appointment processes.³³ Because there is so very little research on selection processes for commissions, Lanegran (2015)³⁴ argues that the advice given to leaders establishing new commissions remains simplistic.

Reconciliation as a process must be deliberate and willing and recognise the pain of victims and confession of guilt from the perpetrators.³⁵ The wrongs of the past must be accepted in a process that thoroughly deals with the relationship between perpetrators and victims.³⁶

²⁹ ORENTLICHER, D.F. 2007. *'Settling Accounts' Revisited: Reconciling Global Norms With Local Agency*. *International Journal of Transitional Justice*, 1(1), 10-22.

³⁰ STACEY, S. 2004. *A Lockean Approach To Transitional Justice*. *the Review of Politics*, 66(01), 55-82; DUGGARD, J. 1997. *"Retrospective Justice: International Law and the South Africa Model"*. in MCADAMS, A.J., 1997. *Transitional Justice and the Rule of Law in New Democracies*. Univ of Notredame Press: Notredame.

³¹ SECRETARY-GENERAL, U.N., 2010. *Guidance Note of the Secretary-General: United Nations Approach To Transitional Justice*.

³² KIM, H., & SIKKINK, K. 2010. *Explaining thedeterrence Effect of Human Rights Prosecutions For Transitional Countries*. *International Studies Quarterly*, 54(4), 939-963; ROHT-ARRIAZA, N. ED. 1995. *Impunity and Human Rights in International Law and Practice*. Oxford University Press: New York.

³³ LANEGRAN, K., 2015. *the Kenyan Truth, Justice and Reconciliation Commission: the Importance of Commissioners and Their Appointment Process*. *Transitional Justice Review*, 1(3), 3.

³⁴ Ibid.

³⁵ HAYNER, P.B., 2010. *Unspeakable Truths 2e: Transitional Justice and the Challenge of Truth Commissions*. Routledge: New York.

³⁶ GUILLERMO, O., SCHMITTER, P. & WHITEHEAD, L., 1986. *Transitions From Authoritarian Rule: Tentative Conclusions About Uncertain Democracies*. Vol 4.

Nevertheless, such a process can be promoted by those who may not be directly involved in the conflict; but the process must be owned by those who are directly concerned with the issues (i.e. victims and perpetrators).³⁷ Opinions are divided and not conclusive on whether a bottom-top approach to reconciliation is preferred to a top-down approach. Proponents of the former approach are of the view that improved interpersonal relations, which lead to local home grown reconciliation and grass roots initiatives are viewed as key to success.³⁸

Contrary to this view however is that for local dynamics to change, national intervention must first take place. This will filter down or create the conditions by which local actors can pursue the reconciliation process.³⁹ No matter what approach is taken, what is clear is that to achieve reconciliation is difficult as the issues involved are personal, and sometimes sensitive.⁴⁰ The authorities cannot impose trust and empathy by decree and they cannot also forgive in the name of the victims. The lessons of the amnesty legislations in Latin American countries in the 1980s did not discourage the families of those who disappeared from seeking justice and retribution.⁴¹ In South Africa, the powers of the South African Truth and Reconciliation Commission (SATRC) to grant amnesty for acts associated with a political objective including crimes that could constitute war crimes or crimes against humanity received disapproval of many human rights organizations.⁴² Further the victims of apartheid regimes were up in arms with the government and multinational companies demanding compensation for past crimes post the South African Truth and Reconciliation Commission (SATRC)

³⁷ SOOKA, Y., 2006. *Dealing With the Past and Transitional Justice: Building Peace Through Accountability*. *International Review of the Red Cross*, 88(862), 311-325.

³⁸ ROHT-ARRIAZA, N. AND MARIEZCURRENA, J. eds., 2006. *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*. Cambridge:Cambridge University Press.

³⁹ BLOOMFIELD, D., BARNES, T. AND HUYSE, L. eds., 2003. *Reconciliation After Violent Conflict: A Handbook*. *International Idea*. 25.

⁴⁰ BHARGAVA, R., 2012. *thedifficulty of Reconciliation*. *Philosophy & Social Criticism*, 38(4-5), 369-377.

⁴¹ DAVIS, J., 2014. *Seeking Human Rights Justice in Latin America: Truth, Extra-Territorial Courts, and the Process of Justice*. Cambridge University Press: Cambridge.

⁴² VARNEY, H, 2010. "Transitional Justice, Criminal Justice and Exceptionalism in South Africa", *Contested Transitions: Dilemmas of Transitional Justice, in Colombia and Comparative Experience*, (Michael Reed & Amanda Lyons eds).

process.⁴³ Arguably, the criticism of the amnesty process in South Africa despite some level of accountability it provided may have informed the provision of a weaker amnesty mandate in the enabling legislation of the Kenya Truth Justice and Reconciliation Commission (KTJRC). The KTJRC only had powers to recommend amnesty for perpetrators unlike the SATRC, which had full powers to grant amnesty after full disclosure. The focus of this thesis is therefore on the concept of Truth Commissions (TCs), and their nature and impact on transitional societies, mainly in the African context.

1.2 Truth and Reconciliation Commissions – an overview

Faith in TRCs to achieve transitional justice has been in vogue in recent years, especially after the formation of the South African Truth and Reconciliation Commission (SATRC) in 1996. The popularity of the SATRC soared after it submitted its report in 1998.⁴⁴ The SATRC also evoked much interest amongst transitional justice scholars, the media⁴⁵ and human rights groups all desirous of peace in the world.⁴⁶ It was hoped that the South African model could be exploited in various transitional societies as a reference point for holding accountable those individuals who in the past took part in various deplorable acts of human rights violations; while also assuring some sort of relief and justice for victims.⁴⁷ It should be recalled that TRCs had earlier been carried out in Latin America (Argentina and Chile); however, the acclaimed success of the South Africa Truth and

⁴³ *Jubilee South Africa and Khulumani Support Group Instituted Claims Against Foreign Banks and Companies That Supported the Apartheid Government. the Claims Were Filed in the US Court On Behalf of Victims of Apartheid Crimes Atrocities.*

⁴⁴ GIBSON, J.L., 2006. *the Contributions of Truth To Reconciliation: Lessons From South Africa. Journal of Conflict Resolution*, 50(3), 409-432.

⁴⁵ MOHAMMED, Y. 1987 (October 27). "Wanted: A National Ethic". *News Watch Magazine. (Nigeria)*, 4. the Author Also Notes: 'This Country Can't Keep Postponing the Acceptance of All the Ingredients That Promoted development and Expect That It Will Develop By Mere Wishful Thinking', 4.

⁴⁶ GREADY, P., 2010. *the Era of Transitional Justice: the Aftermath of the Truth and Reconciliation Commission in South Africa and Beyond*. Routledge: New York.

⁴⁷ *It Should Be Noted That Previous Truth Commissions in Latin America (Chile and Argentina) Had Already Started This Process, Which the South Africa Process Would Deepen.*

Reconciliation Commission (SATRC) helped popularise TRCs as an effective transitional justice mechanism.⁴⁸

TRCs are further seen as a mechanism to capture the story of an authoritarian past and create memorabilia in remembrance of the past, replete with political repression and human rights violation.⁴⁹ It has become the central point for a transitional justice stratagem. By 2003, TRCs had captured popular imagination with more than 25 TRCs formed worldwide.⁵⁰ In the southern parts of the world, for instance, it was observed that this trend has especially become widespread, from Latin America to postcolonial South Africa,⁵¹ to the West African states of Nigeria, Sierra Leone, Liberia and Ghana, and to the island of East Timor (Timor-Leste) situated in South East Asia, which gained its independence and became a sovereign state as late as 2002.⁵² In March 2009, the Truth Justice Reconciliation Act was enacted by the Parliament in Kenya launching the Kenya TJRC.

All these nations have one thing in common, namely that they had Truth and Reconciliation Commissions (hereafter TRC or TRCs) at different times, to account for human rights violations during previous authoritarian or colonial rule in their domains. These TRCs were given a mandate to hold accountable those individuals who committed gross human rights violation under the previous regime and to make recommendations about relief for victims.⁵³

Prior to the sudden surge in popularity of TRCs in the late 1990s; TCs had emerged more than a decade earlier as an alternative to the process of criminal justice, via judiciary systems.⁵⁴ Uganda was the first country to establish a truth

⁴⁸ GRAYBILL, L.S., 2002. *Truth and Reconciliation in South Africa: Miracle Or Model?* Lynne Rienner Publishers: Colorado.

⁴⁹ CASTILLEJO-CUÉLLAR, A., 2007. *Knowledge, Experience, and South Africa's Scenarios of Forgiveness. Radical History Review*, 97, 11-42.

⁵⁰ BLOOMFIELD, D., BARNES, T. AND HUYSE, L. eds., 2003. *Reconciliation After Violent Conflict: A Handbook*. International Idea: Stockholm.

⁵¹ ADELEKE, A., 2007. *the Clash of Nationalisms and the Triumph of Liberalism in South Africa. Lagos Historical Review*, 7.

⁵² OKO, O., 2005. *Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria. Brook. J. Int'l L.*, 31, 9.

⁵³ SANDOVAL, C. 2011. *Transitional justice: Key concepts, processes and challenges*. University of Essex Repository: Colchester.

⁵⁴ DE BRITO, A., GONZALEZ-ENRIQUEZ, C., & DE BRITO, A.B., ENRÍQUEZ, C.G. AND AGUILAR,

commission in 1974;⁵⁵ followed by the Latin American countries of Bolivia (1982), Argentina (1983) and Chile (1990). These countries were the first to have adopted TRCs to take stock of various human rights violations that took place in their regions during violent civil wars in the second half of the twentieth century.⁵⁶

The Argentinian and Chilean TRCs produced remarkable results and it was the experience of both countries that scholars relied on before opting in favour of TRCs, and other similar processes that aimed at seeking justice for all past human-rights violation worldwide.⁵⁷ Both experiences with TRC worked to capture the attention of world scholars. The SATRC later became a role model for countries that did not wish to seek reprisals for all past human rights violation, as well as transitional nation-states.⁵⁸ Perhaps this is because “the leaders of the new South Africa promised that never, never again should this country experience the oppression of one by another”.⁵⁹

The main reason for the popularity of TRCs are its various normative frameworks, such as being more focused on the victims and aiming to restore truth and justice, as well as helping victims overcome their trauma and lead them towards recovery.⁶⁰ The process is based on the mechanism of systematic organisation of collective memory and oral evidence in order to reconstruct actual events and arrive at the global or macro truth, that is, the systemic cause of the human rights violation.⁶¹ It also facilitates reconciliation for victims to address

P. eds., 2001. *the Politics of Memory: Transitional Justice in Democratizing Societies*. Oxford University Press: Oxford.

⁵⁵ See CARVER, R., 1990. *Called To Account: How African Governments Investigate Human Rights Violations*. *African Affairs*, 89(356), 391-415.

⁵⁶ HAYNER, P.B., 2010. *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. Routledge: New York.

⁵⁷ SIKKINK, K. AND WALLING, C.B., 2006. *Argentina's Contribution To Global Trends in Transitional Justice*. *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*, 301-324.

⁵⁸ GRAYBILL, L.S., 2002. *Truth and Reconciliation in South Africa: Miracle Or Model?* Lynne Rienner Publishers: Colorado.

⁵⁹ CHABEDI, M. “South Africa: the Challenge of Building A Rainbow Nation”. in AKINYELE, R.T. ED. 2003. *Race Ethnicity and Nation Building in Africa: Studies in Inter-Group Relations*. Rex Charles Publishers Ltd: Ibadan., 239-262.

⁶⁰ MOON, C. 2006. *Narrating Political Reconciliation: Truth and Reconciliation in South Africa*. *Social & Legal Studies*, 15(2), 257-275.

⁶¹ ADAMS, G., & KURTIS, T. 2012. *Collective Memory Practices As Tools For Reconciliation: Perspectives From Liberation and Cultural Psychology*. *African Conflict & Peace Building Review*, 2(2), 5-28.

their past sufferings and begin a process of healing. It is for these reasons that TRCs have become a useful tool for countries emerging from autocratic rule and civil conflict. Available evidence shows that TRCs tend to portray certain limitations and are sometimes fraught with ineffectuality that renders their functioning difficult and their normative values, which promise to offer justice to victims, in most cases fail to deliver. In fact, most experts working in this field of human rights violation, speak of a lack of empirical evidence to support the various attainment the TRCs or any other processes aiming for transitional justice, claim to achieve.⁶²

However, TRCs have received widespread support amongst member states of the United Nations⁶³ claiming that this approach is a definitive step towards bringing about positive outcomes in the process of reconciliation with a violent past. However, the actual process is very different from various purported claims. The different international human rights organisations advocate TRCs over transitional nations,⁶⁴ mainly developing nations, which have recently emerged from a brutal past, such as Kenya, Liberia, Sierra Leone and Nigeria.⁶⁵

Other countries in this category include Ghana, Rwanda and the Central African Republic.⁶⁶ TRCs are said to present to these nations a model to achieve peace and political stability after past violent conflicts and human rights violation.⁶⁷ However, international organisations fail to comprehend the basic underlying political nature of these African developing countries. The unstable and turbulent nature of their social structure with fledgling democratic orders, exhibits

⁶² OSKAR, T., JAMES, R., & ROLAND, P. 2008. *the Effects of Transitional Justice Mechanisms: A Summary of Empirical Research Findings and Implications For Analysts and Practitioners*. Retrieved from, <http://www.Humansecuritygateway.Com/Documents/Cipstransitionaljustice April2008. Pdf> (Accessed 11 March 2011).

⁶³ UN SECRETARY GENERAL. "Rule of Law and Transitional Justice in Conflict and Post-Conflict Societies". Report By the Secretary General (August 2004).

⁶⁴ OKO, O., 2005. *Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria*. *Brook. J. Int'l L.*, 31, 9.

⁶⁵ ANNUAL REPORT, 1998: *Civil Liberty Organisation Report On the State of Human Rights in Nigeria*. See Also Annual Report, 1997: *Civil Liberty Organisation Report On the State of Human Rights in Nigeria*.

⁶⁶ HUTCHFUL, K., 2001. *Militarisation and State Reconstruction in Africa: the West African Case. the Constitution*, 2(1), 1-23.

⁶⁷ LAMBOURNE, W., 2009. *Transitional Justice and Peacebuilding After Mass Violence. International Journal of Transitional Justice*, 3(1), 28-48.

a certain type of competitiveness in their political system and electoral policies that often result in unintended negative outcomes for TRCs.⁶⁸

Consequently, problems arise when these TRCs, suitable for stable states, are recommended for fragile and unstable African democracies like Nigeria. Besides these basic problems, the major challenges faced by the Nigerian TRC (that later came to light) were that the Commission's proceedings were not supported by strong laws, spelling out its mandate clearly.⁶⁹ Owing to these flaws some of the respondents, who were financially strong and powerful,⁷⁰ exploited the legal system to stall the proceedings of the Oputa Commission. The Supreme Court of Nigeria, on the other hand, declared that the Commission was illegal, and therefore void.⁷¹

1.3 Purpose of the study

The purpose of this study is to examine the efficacy of the Human Rights Violation Investigation Commission (Oputa Commission) in the process of Nigeria's transitional justice. It brings to the fore the involvement of the military in Nigerian politics⁷² and attendant human rights violation since 1966.⁷³ As a neglected theme in national discourse, this research differs extensively from the broader issues of criminal justice and the role of the International Criminal Court (ICC), subject to intensive research and studies by different scholars.⁷⁴

⁶⁸ MCGOWAN, P.J., 2006. *Coups and Conflict in West Africa, 1955-2004: Part II, Empirical Findings*. *Armed Forces & Society*, 32(2), 234-253.

⁶⁹ SMITH, D.J., 2010. *Response To Eric Uslaner's Review of A Culture of Corruption: Everyday Deception and Popular Discontent in Nigeria*. *Perspectives On Politics*, 8(4), 1176-1177.

⁷⁰ MOMOH, A. AND ADEJUMOBI, S., 1999. *the Nigerian Military and the Crisis of Democratic Transition: A Study in the Monopoly of Power*. Civil Liberties Organisation: Lagos.

⁷¹ FAWEHINMI GANI AND OTHERS V. GENERAL IBRAHIM BABANGIDA AND OTHERS (Sc. 360/2001).

⁷² MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster: New York.

⁷³ DADA, D.J.A. 2013. *Human Rights Protection in Nigeria: the Past, the Present and Goals For Role Actors For the Future*. *Human Rights*, 14.

⁷⁴ INTERNATIONAL CRIMINAL COURT: *Selected Full-Text Books and Articles Can Be Found On*. <https://www.questia.com/library/criminal-justice/trials/international-criminal-court>.

Therefore, the primary purpose of this work is to analyse the nature and dynamics of political transition in Nigeria, and how the military regimes deployed power and authority in the abuse of human rights.⁷⁵ Indeed, the study reveals the way government manipulates commissions of inquiry to divert public attention from socio-political problems.⁷⁶ This research will be beneficial to scholars and researchers in various fields of knowledge. It will also be useful to nations yearning for transitional justice and reconciliation, and by extension nations emerging from violent past and gross human rights violations.

Emphatically, this is imperative if there is the disintegration of certain states, the reconstitution of national identities, the emergence of transnational non-state actors such as the 'Islamic State' or Boko Haram and the intervention of the international criminal justice system in numerous conflicts that have called on us to challenge the immutability of the nation state as a primary means of reflecting on and organizing transitional justice approaches.⁷⁷

1.4 Aim and objectives

The aim of this research is to determine the effectiveness of the Oputa Commission in the process of Nigeria's transitional justice. Myriad forms of human rights violation by law enforcement agencies during the military regimes are also investigated.⁷⁸ Since the emergence of the military in Nigerian politics,⁷⁹ human rights violations had been underplayed in major discourse on the experiences of victims and witnesses,⁸⁰ despite the inclusion of

⁷⁵ BAIYE, C. 2013, (October 21). "Unmasking the Babangida Mystique", *Tell Magazine*, Nigeria, 56-59.

⁷⁶ ADEDIRAN, M.O. 1995. *Characterisation and Classification of Tribunals and Inquiries in Nigeria*. *Verfassung Und Recht in Übersee/Law and Politics in Africa, Asia and Latin America*, 522-549.

⁷⁷ HAZAN, PIERRE. "Beyond Borders: the New Architecture of Transitional Justice?" (2017): 1-8. Downloaded From [Https://Academic.Oup.Com/Ijtj/Article-Abstract/11/1/1/3059851](https://Academic.Oup.Com/Ijtj/Article-Abstract/11/1/1/3059851) on 28 April 2018.

⁷⁸ STROMSETH, J., WIPPMAN, D., & BROOKS, R. 2006. *Can Might Make Rights? Building Rule of Law After Military Interventions*. Cambridge University Press: Cambridge.

⁷⁹ MEREDITH, M. 2011. *the State of Africa*, Op.Cit. Also See UWECHUE, R. 2004. *Reflections On the Nigerian Civil War: Facing the Future*. Heritage Press, Ltd: Abuja.

⁸⁰ OKOBI, J.U. (2013, October 21). "Remaking Nigeria: the Task Ahead," *Tell Magazine*, Nigeria, 22-24.

fundamental human rights in the Constitution of the Federal Republic of Nigeria in 1989.⁸¹

Similarly, reports of the Civil Liberty Organisation⁸² and international non-governmental organisations, such as Human Rights Watch and Amnesty International, have also remained on the periphery of the government's agenda. This scenario clearly underscores the importance of this study. Four specific objectives in this study are: 1) examine the dynamics of political transition since colonial Nigeria,⁸³ 2) discuss the nature and impact of human rights violation in Nigeria, 3) analyse the role and contribution of the Human Rights Violation Investigation Commission (the Oputa Commission),⁸⁴ and 4) underline the lessons that other countries could learn from the Nigeria transitional justice process.

1.5 Problem statement

Over the years, the problems of human rights violation by law enforcement agencies and other organs of government⁸⁵ have been minimised in major discourse on nation building in Nigeria.⁸⁶ This was of real concern in the last decade of the twentieth century when police brutality reached its peak.⁸⁷ Apart from the complaints of victims and witnesses, the

⁸¹ OLURODE, L. (2017, March 22). *"the Slaughter's Slab As A Metaphor"*. Inaugural Lecture Delivered At the University of Lagos, Nigeria, 1-69, *Specifically*.1. See NDUBUISI, F.N., & NATHANIEL O C, 2002. *Issues in Jurisprudence and Principles of Human Rights*, 187. Dmodus Publishers Ltd: Lagos.

⁸² ANNUAL REPORT, 1998: *Civil Liberty Organisation Report On the State of Human Rights in Nigeria*: Human Rights Watch. Also See *Annual Report, 1997: Civil Liberty Organisation Report On the State of Human Rights in Nigeria*: Human Rights Watch.

⁸³ EKPU, R., AGBESED., & MOHAMMED, Y. (1987, APRIL 13). *"Esau's Hand, Jacob's Voice, Cookey Political Bureau Travelled So Far Yet Stayed So Close,"* *News Watch Magazine*, 15-28. Also See NWABUEZE, N. 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press Ltd: Ikeja.

⁸⁴ NWANKWO, C. (2001, October 22) *"Beyond the Oputa Rights Violation Panel"*, *the Punch*. 20.

⁸⁵ THE PUNCH Editorial, March 6, 1998, 3.

⁸⁶ BELLO, A. AND ODUSOTE, A., 2013. *the Matrix of Bad Governance: Corruption and Insecurity in Nigeria*. in *Proceedings of the 46th Annual Conference of the Nigerian Association of Law Teachers Held Between the 22nd-26th April* (606-643).

⁸⁷ *Corruption and Human Rights Abuse By the Nigerian Police Force By Human Rights Watch* (<https://www.hrw.org/report/2010/08/17/Everyones-Game/Corruption-and-Human-Rights-Abuses-Nigeria-Police-Force>) (Accessed On 17 April 2017).

government of the day did not see anything wrong with the atrocities and extrajudicial killing.⁸⁸ Besides, the reports of human rights activists also corroborated the account of victims and observers, which the authorities considered as sabotage to national unity.⁸⁹

Amidst the overwhelming evidence of human rights violation, the Nigerian government vehemently denied its existence.⁹⁰ At the same time, government representatives and senior officers in the military debunked the idea as fictional and a campaign of calumny to tarnish the image of the country.⁹¹ The undaunted efforts of human rights activists and non-governmental organisations that reported victims of human rights violations to the media⁹² ultimately gave credence to the rumour that forced government to accept responsibility. The capitulation of the authorities was not for nothing, as some scholars posit, but due to the imminent breakdown of law and order, which the government wanted to forestall. This is corroborated by Grissen (1995) "One man's lust for power has denied human rights to the majority of Nigeria's millions. Such mockery of people cannot long withstand silent rebellion that smoulders just beneath the surface of the nation's people".⁹³ Thus, there was a cry for reconciliation and peace building in the form of a Truth and Reconciliation Commission to reduce the increasing agitation.⁹⁴

It is therefore obvious previous that the diversity of Nigerian society, as well as its composition which centred on ethnicity and class⁹⁵ has made human

⁸⁸ OLORUNYOMI, D. (1995, February 6). "Go, Soldiers, Go", *News Magazine*, Nigeria, 14-19.

⁸⁹ OYEDIRAN, O. 1979. *Nigerian Government and Politics Under Military Rule, 1966-79*, Macmillan Nigeria Publishers Ltd: Lagos

⁹⁰ *POST EXPRESS* (1998, November 16) "Coomasie Opposes Abrogation of Decree 2", 3.

⁹¹ OLUWANIYI, O.O., 2011. *Police and the Institution of Corruption in Nigeria. Policing & Society*, 21(1), 67-83.

⁹² *Mosop Press Release*, January 12, 1998.

⁹³ GRISSIN, L.V. 1995. *That we may be one: the autobiography of Nigerian Ambassador Jolly Tanko Yusuf*. William B. Eerdmans Publishing Company: Grand Rapids. Op.Cit.110.

⁹⁴ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed. Master's Thesis*, the University of Bergen.

⁹⁵ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster. Also See KABBA, A. (1995, July 10), "Conservative Northern Elites Use

rights violation possible since the civil war. The question therefore is how did Nigeria get to this point in its history?⁹⁶ Has the country acknowledged the various abuses and extrajudicial killing in Nigeria? And further, to what extent did the Oputa Commission achieve its mandate?⁹⁷ These among other questions have compelled this study to evaluate the Human Rights Violation Investigation Commission (HRVIC), hereafter the Oputa Commission, and the process of Nigerian transitional justice.

1.6 Research questions

Research questions are meant to guide researchers in their interpretation and analysis.⁹⁸ Therefore this study is essentially guided by the following questions:

What were the dynamics of political transition since colonial Nigeria?⁹⁹

What was the nature and impact of human rights violation in Nigeria?

What was the role and contribution of the Oputa Commission and to what extent did it achieve its mandate?¹⁰⁰

What were the lessons of the Oputa Commission for Nigerian peoples and the wider world, especially countries in transition from a brutal or authoritarian past?

Aminu Saleh As Lightening Rod To Incinerate the Transition Agenda", News Magazine, Nigeria, 14-17.

⁹⁶ ELEGBEDE, W., YAKASAI. (2016, July 29). *"Inadequate Political Advice Led To the Tragedy"*. *the New Telegraph Newspaper*, 13.

⁹⁷ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen, Op.Cit.

⁹⁸ *University of Lagos, School of Postgraduate Studies, Format For Thesis Presentation 2016*, University of Lagos Publishers: Lagos, 4-5. See IMOISILI, I.C. ED. 1996. *Social Research Methods For Nigerian Students*. Malt House Press Ltd: Ikeja, 18-29. *For A Comprehensive Review*, See PARSONS, C.J. 1976. *Theses and Project Work*. George Allen and Unwin Ltd: London.

⁹⁹ UWUJAREN, W. (1995, JUNE 26), *"Hoax-Borne"*, News Magazine, 10-12.

¹⁰⁰ NWANKWO, C., 2001. *Beyond the Oputa Rights Violation Panel*, Op.Cit.

1.7 Hypothesis

The success of the Oputa Commission was diminished because there was no official publication of its report,¹⁰¹ because the Supreme Court of Nigeria declared the Commission illegal and redundant.¹⁰² An important outcome of the TRC in Nigeria is that, if TRCs are to be established, the Commission should be so created to suit the national context.¹⁰³ There must be well-defined legislation, with clearly spells out its jurisdictions so that conflicts with other existing mechanisms would not occur. All these measures are necessary to make a TRC function effectively within a fledgling democracy, emerging from a brutal past of gross human rights violation.

Could the Oputa Commission be regarded as a success, even though its report was not published officially?¹⁰⁴ The answer is affirmative because there were other benefits. The Oputa Commission was an attempt at reconciliation and it covered a lot of grounds despite the absence of strong legal instruments to back it up and the pronouncement of the Supreme Court. It is a plus to ordinary people who never thought their cases would one day be heard in the public domain and create shame on those who thought they were above the law.¹⁰⁵

1.8 Operational definition of terms

It is important to provide a working definition of some of the terms used in this study to promote wider understanding. **Civil war** means a violent conflict within a country fought by organised groups that aim to take power at the centre

¹⁰¹ NWOGU, N.V., 2007. *Shaping Truth, Reshaping Justice: Sectarian Politics and the Nigerian Truth Commission*. Lexington Books: Ibadan.

¹⁰² *European Initiative For Democracy and Human Rights: Promoting Justice and Rule of Law. Geneva Conference Final Meeting Report*, 10-11 (November 2008), Retrieved [Http://www.isisc.org/public/Geneva%20final%20report.Pdf](http://www.isisc.org/public/Geneva%20final%20report.Pdf) (Accessed 11 March 2011).

¹⁰³ CHAPMAN, A.R., & BALL, P. 2001. *the Truth of Truth Commissions: Comparative Lessons From Haiti, South Africa, and Guatemala*. *Human Rights Quarterly*, 23(1), 1-43.

¹⁰⁴ FAWEHINMI GANI AND OTHERS V. GENERAL IBRAHIM BABANGIDA AND OTHERS (Sc. 360/2001).

¹⁰⁵ HUMAN RIGHTS VIOLATION INVESTIGATION COMMISSION, 2007. *HRVIC Report, Conclusions and Recommendations, Synoptic Overview*. Unpublished. Available From [Http://www.Nigerianmuse.Com/Nigeriawatch/Oputa/](http://www.Nigerianmuse.Com/Nigeriawatch/Oputa/), Accessed, 19.

or in a region or to change government policies.¹⁰⁶ **War** refers to a matter of doing evil in the hope that good may come out of it. Out of war comes peace; out of loss gain. War denotes “armed conflict not of an international character”¹⁰⁷ and must show two criteria:

- (1) The revolting faction must show some reasonable degree of organization.
- (2) The armed confrontation between the parties must reach some degree of intensity. If all the above characteristics are present, then the legal government is “obliged to have recourse to the regular military forces against insurgents organized as military”.¹⁰⁸

Human rights imply that “all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”.¹⁰⁹ **Transitional justice** means a response to systematic or widespread violation of human rights. It seeks recognition for the victims, and promotes possibilities for peace, reconciliation, and democracy in the country.¹¹⁰ Transitional justice is not a special form of justice but adapted to societies transforming themselves after a period of pervasive human rights violations. In some cases, this transformation happens suddenly; in others, it may take place over many decades”.¹¹¹ Truth commissions refer to

¹⁰⁶ SAMBANIS, N., 2004. *What Is Civil War? Conceptual and Empirical Complexities of An Operational Definition*. *Journal of Conflict Resolution*, 48(6), 814-858. Retrieved <http://www.Foreignaffairs.Com/Articles/62443/James-D-Fearon/Iraqs-Civil-War> (Accessed 9 March 2011).

¹⁰⁷ MORRIS, I., 2014. *War! What Is It Good For?: Conflict and the Progress of Civilization From Primates To Robots*. Farrar, Straus and Giroux. Also See BAMALI, A.N. 2006. *the Role of Leadership in Conflict Management and Prevention of War: the Bakassi Peninsula As A Case Study*. *the Nigerian Army Quarterly Journal*, 2(3), 322-331.

¹⁰⁸ DONNELLY, J. 2013. *Universal Human Rights in Theory and Practice*. Cornell University Press, *International Humanitarian Law Treaties and Documents*. ICRC. *Convention (Iii) Relative To the Treatment of Prisoners of War*. Geneva (12 August, 1949). Retrieved http://www.Icrc.Org/Ihl.Nsf/Com/375-590006?Open_Document (Accessed 11 March 2011).

¹⁰⁹ THE UNIVERSAL DECLARATION OF HUMAN RIGHTS. *Article 1*. Retrieved <http://www.Un.Org/En/Documents/Udhr/Index.Shtml#A1>. (Accessed 10 March 2011).

¹¹⁰ BEST, S.G. ED., 2006. *Introduction To Peace and Conflict Studies in West Africa: A Reader*. Spectrum Books: Ibadan. Also See. *the Potential Complementary of Mediation and Consultation Within A Contingency Model of Third Party Intervention*, *Journal of Peace Research*, 28(1), 1991, 32.

¹¹¹ NAGY, R., 2008. *Transitional Justice As Global Project: Critical Reflections*. *Third World Quarterly*, 29(2), 275-289.; BICKFORD, L., 2004. *Transitional Justice*. *the Encyclopaedia of Genocide and Crimes Against Humanity*, 3, 1045. (December 2008).Retrieved

commissions of inquiry with the primary purpose(s) of investigating and reporting on key periods of recent past abuse. They are often official state bodies that make recommendations to remedy such abuse and to prevent its recurrence.¹¹²

1.9 Significance of the study

This study contributes to Nigerian legal studies, history, conflict and peace building. It is one of the few detailed studies linking the democratic development of Nigeria with human rights violation by the state, and the quest to address those violations through a transitional justice mechanism known as the Oputa Commission. Specifically, the significance of the study includes:

- Discussion on the dynamics of political transition since colonial Nigeria.¹¹³
- Examination of the nature and impact of human rights violation in Nigeria.¹¹⁴
- An analysis of the role and contribution of the Truth and Reconciliation Commission, known as the Oputa Commission.
- Underlying lessons of the Oputa Commission for Nigerian peoples and the wider world.
- Assistance of the government in repositioning the Nigerian legal system and security services to meet the challenges of the modern era.¹¹⁵
- Benefit to scholars, researchers and the public interested in issues of politics,¹¹⁶ transitional justice and human rights.

[Http://lctj.org/en/tj/780.html](http://lctj.org/en/tj/780.html) (Accessed 9 March 2011).

¹¹² WIEBELHAUS-BRAHM, E., 2009. *What Is A Truth Commission and Why Does It Matter?*. *Peace and Conflict Review*. 3

¹¹³ ONUOHA, B. "Reflections On the Transition Programmes," in Onuoha, B. and Fadakinte, M.M., 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press. 19-39. See Also OLAGUNJU, T., JINADU, A. AND OYOVBAIRE, S.E., 1993. *Transition To Democracy in Nigeria (1985-1993)*. Safari Books with Spectrum Books: Lagos, 169-171

¹¹⁴ ANNUAL REPORT, 1998: *Civil Liberty Organisation Report On the State of Human Rights in Nigeria*: Human Rights Watch. Also See Human Rights Watch Staff, 1998. *Human Rights Watch World Report 1999*. Human Rights Watch.

¹¹⁵ See Also "Introduction". in ONUOHA, B. AND FADAKINTE, M.M., 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press: Lagos. 1-18.

¹¹⁶ BEST, S.G. ED., 2006. *Introduction To Peace and Conflict Studies in West Africa: A Reader*. Spectrum Books: Ibadan

1.10 Methodology and justification of the study

The study of truth and reconciliation is an emerging sub-discipline within the larger discipline of law, conflict and peace building. Thus, the methodology for studying this aspect of knowledge will continue to grow as more doctoral theses are devoted to this study area. In redressing this gap, therefore the study adopts an inter-disciplinary approach; it employs the historical method of data collection, analysis and interpretation from primary and secondary sources.¹¹⁷

Primary sources include archival materials obtained from the national archives in Kaduna (NAK), Ibadan (NAI) and Enugu (NAE) respectively. Materials obtained from these places were analysed and interpreted with a view to clarifying and complementing information from oral interviews and documentary evidence. The study also gained from the personal experience of the researcher who was a coordinator and technical advisor to the Oputa Commission. The researcher also obtained oral evidence collected through structured interviews from respondents including (a) victims and witnesses of human rights violations in Lagos, Abuja and Enugu, (b) law enforcement agents who lived and worked in Lagos and Abuja, (c) participants and observers of the Oputa Commission, and (d) human rights activists. Reliance on oral evidence arose from the dearth of documentary evidence of principal witnesses, victims and a panel of judges (known as the Oputa Panel). Above all, it provides valuable clues that complement other sources and enrich the work.

Also employed in the study is information from newspapers¹¹⁸, magazines,¹¹⁹ bulletins and other related documents, especially reports of Truth and Reconciliation Commissions in Liberia, South Africa and Mexico, to mention a few. These documents were accessed for the purposes of verifying existing data. Most of the information was obtained from the University of Lagos and

¹¹⁷ GRAZIANO, AM, & RAULIN, ML (2009). *Research Methods: A Process of Inquiry* (7th eds.). Harper Collins: New York, 26.

¹¹⁸ *These Newspapers Include the Punch, the Sun, and the Guardian Among Others. Valuable Information Can Be Mined From These Sources.*

¹¹⁹ *These Include: News Watch Magazine, News Magazine, and Tell Magazine, To Mention A Few. These Outfits Are Crusaders of Democracy and Rule of Law. Some Were Closed Down Many Times By the Military Junta.*

Christopher University Mowe, Lagos. Others were online publications on the TRC in Ghana¹²⁰ and Latin America.

The researcher equally exploited films and documentaries¹²¹ on TRCs in other countries. The documentary films are useful because they help reconcile grey areas in the activities of the Oputa Commission. Secondary sources were also utilised in this study, consisting mainly of books, journal articles, theses, dissertations, monographs and other unpublished works. Most were obtained from the University of Lagos, University of Nigeria, Nsukka, Ahmadu Bello University, Zaria and Christopher University Mowe, Lagos.

In analysis and interpretation of the data, the study incorporated concepts from cognate disciplines¹²² such as law, history, political science and peace and conflict studies.¹²³ The fieldwork was conducted in Lagos, Abuja and Enugu.¹²⁴ This also assisted the researcher in clarifying information obtained from other sources.

This is the first focused study on Truth and Reconciliation Commission in Nigeria, as to the best of our knowledge, no intellectual production on the Oputa Commission has been carried out. The study is apt and timely because it draws on parallels between intellectual evidence, politics and policy making.¹²⁵ On the one hand, this research will serve as a reminder to the authorities that there was a Nigeria project that is yet to be concluded for lack of legal instruments.¹²⁶

¹²⁰ VALJI, N., 2006. *Ghana's National Reconciliation Commission: A Comparative Assessment*. International Centre For Transitional Justice, Occasional Paper Series, New York. Retrieved. <http://www.ictj.org/Static/Africa/Subsahara/Ghanacommission.Pdf>. (Accessed 10 March 2011).

¹²¹ *Documentary On the Oputa Commission*, Nigerian Television Authority (Nta) Presenter, Cyril Stober, 'Weekend File,' 7/1/17.

¹²² *Transitional Justice Is Elaborately Discoursed in Many Intellectual Productions Including Peace and Conflict Studies, Law, Political Science and Humanities. Perhaps This Is Because It Is A Contemporary Debate in Nation Building*.

¹²³ SARANTAKOS, S. 2005. *Social Research*, 3rd Edn. Basingstoke: Palgrave.

¹²⁴ *Fieldwork Was Carried Out in the Above Mentioned Cities in 2016. As New Evidence Comes To Light More Trips Would Be Made To Reconcile Grey Areas With Respondents, Civil Rights Activists and Victims of Human Rights Violations*.

¹²⁵ *Transitional Justice Is A Holistic Approach To Reconcile Or Re-United deeply Divided and Polarised Societies With A Legacy of War, Armed Conflict and Gross Violation of Human Rights*. BEST, S.G. ED., 2006. *Introduction To Peace and Conflict Studies in West Africa: A Reader*. Spectrum Books: Ibadan.

¹²⁶ See CARVER, R., 1990. *Called To Account: How African Governments Investigate Human Rights Violations*. *African Affairs*, 89(356), 391-415.

The study, on the other hand, is capable of convincing victims of human rights violations in Nigeria that they have been vindicated, even though the findings were not implemented. It will also inform the government that human rights violation in Nigeria needs be tackled with the urgency it demands¹²⁷ just like that of Ghana,¹²⁸ Liberia and the SATRC. Additionally, this study will be beneficial to human rights activists and non-governmental organisations, researchers and the public in need of raw material for further research and evaluation of nations in transition.

1.11 Limitations of the study

The concept of transitional justice and human rights violation is beyond the scope of this research; it was therefore important to consider the interplay of politics and social justice in Nigerian polity. Therefore, the limitations of this study are the time set for submission, financial constraints, and victims' and witnesses'¹²⁹ reluctance to grant interviews on their experience of law enforcement agents, as well as paucity of archival materials.

1.12 Literature review

The study adopts a thematic approach in the review of relevant literature and these are categorised as follows. The first category discusses the history of Nigeria and development of ethnic politics since the colonial period. The second explores the involvement of the Nigerian military in politics and transition to democracy. Whereas the third category comprises generalised works on human rights violation for the period 1966–1999, and the Oputa Commission.

History of Nigeria and development of ethnic politics

¹²⁷ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed (Master's Thesis)*, the University of Bergen.Op.Cit.

¹²⁸ ODURO, F., 2012. *the Canadian Truth and Reconciliation Commission: Lessons From Comparable Experiences in Nigeria and Ghana. the Canadian Journal of Native Studies*, 32(2), 103.

¹²⁹ *the Reluctance of Victims and Witnesses of Human Rights Violations To Provide Information Was Particularly Challenging. Their Disposition Was Borne Out of the Fact That Security Agencies Are Still On the Prowl, Intimidating and Harassing Perceived and Unsuspecting Members of the Public.*

The literature in the first category include: Ikime (ed.) (2012), *Groundwork of Nigerian History*,¹³⁰ Falola et al. (1989), *History of Nigeria*, vol. 1,¹³¹ Crowder, (1966), *The Story of Nigeria*¹³² and Falola et al. (1991), *History of Nigeria*, vol.3,¹³³ Akpofure and Crowder (1966), *Nigeria, A Modern History for Schools*,¹³⁴ Perham (1960), *Lugard, The Years of Authority 1898–1945*,¹³⁵ and Lugard (1922), *The Dual Mandate in British Tropical Africa*.¹³⁶

These works are certainly useful to this study because they explore the history of Nigeria from pre- to post-colonial periods. Obaro Ikime's edited work is a collection of essays, which covers the entire spectrum of the history of Africa's largest black state. Part 4 of the book, which covers Nigeria in the twentieth century, is most valuable to this study, particularly, Tamuno's "British Colonial Administration in Nigeria in the Twentieth Century", and "The Nationalist Struggle for Independence".¹³⁷

Falola et al. (1991)¹³⁸ discusses, among other subjects, the land and peoples of Nigeria, tradition of origins, intergroup relations, as well as Nigeria and the outside world. In discussing the birth of Nigeria, and the events leading to independence, Crowder (1966)¹³⁹ affirms that Nigeria's journey towards self-determination was complex and eventful.

The chapters on the rise of Nigerian nationalism, the three constitutions and independence achieved, are raw material for the understanding of this

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- ¹³⁰ IKIME, O. ED. 2012. *Groundwork of Nigerian History*. Hebn Publishers Plc: Ibadan.
- ¹³¹ FALOLA, T. ET AL. 1989. *History of Nigeria, Vol.1, Nigeria Before 1800 A.D.* Longman Nigeria Ltd: Lagos
- ¹³² CROWDER, M., 1966. *the Story of Nigeria*. Faber and Faber: London.
- ¹³³ FALOLA, T. e al. 1991. *History of Nigeria, Vol. 3, Nigeria in the Twentieth Century*. Longman Nigeria Ltd: Lagos
- ¹³⁴ AKPOFURE, R., & CROWDER, M. 1966. *Nigeria: A Modern History For Schools*. Faber and Faber Ltd: London.
- ¹³⁵ PERHAM, M., 1960. *Lugard: the Years of Authority, 1898-1945; the Second Part of the Life of Frederick Dealtry Lugard*, Later Lord Lugard of Abinger. Collins: London.
- ¹³⁶ LUGARD, F.D. 1922. *thedual Mandate in British Tropical Africa*. William Blackwood and Sons: London
- ¹³⁷ TAMUNO, T.A. 2012. "British Colonial Administration in Nigeria in the 20th Century". in IKIME, O. ED. 2012. *Groundwork On Nigerian History*. Hebn Publishers Plc: Ibadan, 393-410.
- ¹³⁸ FALOLA, T., 1991. *History of Nigeria: Nigeria in the Twentieth Century*. Longman Nigeria: Lagos,12-26.
- ¹³⁹ CROWDER, M., 1966. *the Story of Nigeria*. Faber and Faber: London.

study.¹⁴⁰ Writing on colonialism, Falola and colleagues support Crowder's thinking on the political impact of colonial rule. The chapters on military administration, 1966–1979 and the second republic, 1979–1983 provide a rich study on activities of the military junta and attendant human rights violation in the country, the focus of this study.¹⁴¹

Akpofure and Crowder's work corroborates the views of Falola et al. but emphasises that the history of Nigeria today stretches back more than two thousand years. At present, much of this history lies in the myths and legends of oral tradition. The chapters on consular rule loss of sovereignty and the origin of regionalism inform this study.¹⁴²

Perham's work investigates the early years of indirect rule in Nigeria and the various contradictions of nationhood. The chapters on the creation of Nigeria¹⁴³, indirect rule,¹⁴⁴ and the Lagos opposition,¹⁴⁵ are critical to this work. Also meaningful in understanding British Empire is Lugard's exciting handbook on governance used by Lugard in his crusade for colonial enterprise. Lugard's work is a veritable guide on colonialism and machinery of government, and deals with the history of African peoples in their early and formative years., Perham therefore underscores the contribution of Frederick Lugard to the making of Nigeria.

Other works in the first category include those of Joseph (1999), *Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic*,¹⁴⁶ Coleman (1958), *Nigeria: Background to Nationalism*,¹⁴⁷ Nnoli (1978) *Ethnic Politics in Nigeria*,¹⁴⁸ Akinyele, ed (2003), *Race Ethnicity and Nation Building*

¹⁴⁰ Op.Cit. *the Story of Nigeria*, 253-314.

¹⁴¹ FALOLA, T. ET AL. 1991. *History of Nigeria, Vol.3*, Op.Cit.

¹⁴² AKPOFURE, R., & CROWDER, M. (1966). *Nigeria, A Modern History For Schools*. Faber and Faber: London.

¹⁴³ PERHAM, M., 1960. *Lugard: the Years of Authority, 1898-1945; the Second Part of the Life of Frederick Dealtry Lugard, Later Lord Lugard of Abinger*. Collins: London.

¹⁴⁴ Ibid.

¹⁴⁵ Ibid.

¹⁴⁶ JOSEPH, R.A. 1999. *Democracy and Prebendal Politics in Nigeria*, Op.Cit.

¹⁴⁷ COLEMAN, J.S. AND COLEMAN, J.S., 1958. *Nigeria: Background To Nationalism*. Univ of California Press: Berkeley.

¹⁴⁸ NNOLI, O., 1978. *Ethnic Politics in Nigeria*. Fourth Dimension Publishers: Enugu.

in Africa: Studies in Inter-Group Relations,¹⁴⁹ and Osuntokun and Olukoju, eds. (1997), *Nigerian Peoples and Culture*.¹⁵⁰

These publications have sharpened our understanding of Nigeria's democracy, nationalism and ethnic politics. Joseph, Coleman and Nnoli's works appear distinct, in the sense that while Joseph establishes the crisis of Nigerian democracy, military rule and prebendal politics, Coleman's work provides a rich study of the debate on Nigerian nationalism. According to the former, many factors underlie the dawn of party politics, class interests and competitive ethnic politics.

Continually though Nnoli's work also qualifies Coleman's arguments, particularly with reference to the politicisation of ethnicity and the colonial ideology of divide and rule. Two chapters in the book are fundamental to this study. These are, Ndukaeze Nwabueze's "Towards a Wider Understanding of Inter-group Relations), and Mark Chabad's "South Africa: The Challenge of Building a Rainbow Nation". The interesting aspect of these accounts is the argument that Nigeria's crises had its roots in ethnic politics. Despite the interesting discourse, these works did not provide a focus on peace building, or the TRC, which is the focus of this study. On the other hand, Osuntokun and Olukoju, eds. (1997)¹⁵¹ deal with thematic issues in Nigerian history and politics. They bring to the fore the dynamics of cultural nationalism and ethnic politics, which laid the foundation for corruption and tribal sentiments, thereby corroborating the respective arguments of Nnoli¹⁵² and Coleman.¹⁵³

Select literature on the involvement of the Nigerian military in politics and the transition to democracy

¹⁴⁹ AKINYELE, R.T. ED. 2003. *Race, Ethnicity and Nation Building in Africa: Studies in Inter-Group Relations*. Rex Charles Publication Ltd : Ibadan.

¹⁵⁰ OSUNTOKUN, A., & OLUKOJU, A. ED. 1997. *Nigerian Peoples and Culture*. Davidson Press: Ibadan.

¹⁵¹ Ibid.

¹⁵² NNOLI, O., 1978. *Ethnic Politics in Nigeria (Enugu: Forth Dimension)*. JIBO, M, SIMBINE, J & GALADIMA, H.S (2001): *Ethnic Groups and Conflicts in Nigeria: the Northcentral Zone of Nigeria. the Lords Creation*, 4.

¹⁵³ COLEMAN, J.S. 1958. *Nigeria: Background To Nationalism*, University of California Press: Berkeley, 319-330.

Literature in the second category is an interesting review because of its rich insights on the involvement of the Nigerian military in politics and transition to democracy. They include: Miners (1971), *The Nigerian Army 1956–1966*,¹⁵⁴ Elaigwu (1985), *Gowon: The Biography of a Soldier-Statesman*,¹⁵⁵ and *History of the Nigerian Army 1863–1992* (1992),¹⁵⁶ Uwechue (1971), *Reflections on the Nigerian Civil War: Facing the Future*,¹⁵⁷ and Ojiako (1979), *13 Years of Military Rule 1966–1979*.¹⁵⁸

Miner underscores the historical development and military transformation leading to Nigeria's independence. The author also discusses the factors that contributed to the Nigerian Civil War and the entry of the military into politics.¹⁵⁹ This idea is taken further by Elaigwu, who provides an authoritative account of the life and times of Gowon and his journey to military rule. Apart from exploring the life of Gowon and his political engineering, the work also highlights the democracy agenda, which was truncated by the Dimka's coup of 1976.¹⁶⁰

The *History of the Nigerian Army 1863–1992* discusses its origins and development until 1992. It also explores the role of the military in governance and internal security operations (ISOs). The chapter on the "Nigeria-Army in Government"¹⁶¹ is relevant to this study, because it sharpens our understanding of events leading to military political incursion as well as corroborating the accounts of Miners and other scholars. Uwechue's detailed study dwells on the situation before and after the civil war, which did not differ much from that of Miners and Elaigwu. Rather it focuses on one man's account and participant observation of the war, and this raises much argument on Uwechue's involvement (on the side of Federal troops at the beginning) and his change of position as an ambassador to the Biafran government, which is highly informative.

¹⁵⁴ MINERS, N.J. 1971. *the Nigerian Army, 1956-1966*. Methuen and Co Ltd: London.

¹⁵⁵ ELAIGWU, J.I., 1986. *Gowon: the Biography of A Soldier-Statesman*. West Books: Ibadan.

¹⁵⁶ *History of the Nigerian Army, 1863-1992*. 1992. Nigerian Army Education Corps and Schools: Abuja.

¹⁵⁷ UWECHUE, R. 1971. *Reflections On the Nigerian Civil War: Facing the Future*. Africana Publishing Corporation: New York.

¹⁵⁸ Ojiako, J.O. 1979. *Thirteen Years of Military Rule, 1966-1979*. Daily Times of Nigeria Ltd: Lagos.

¹⁵⁹ MINERS, N.J. 1971. *the Nigerian Army, 1956-1966*, Op.Cit. 155-226.

¹⁶⁰ ELAIGWU J.I. 1986. *Gowon: the Biography of A Soldier*, Op.Cit.154-272.

¹⁶¹ *History of the Nigerian Army*, Op.Cit.223-232.

Other books in the second category include that of Haywood and Clarke (1964), *The History of the Royal West African Frontier Force*,¹⁶² Ukpabi (1966) “The Origins of the West African Frontier Force,”¹⁶³ Kirk-Greene (1964) *A Preliminary Note on New Sources for Nigerian Military History*¹⁶⁴ Madiebo (1980), *The Nigerian Revolution and the Biafran War*,¹⁶⁵ and Gutteridge (1969), *The Military in African Politics*.¹⁶⁶ These works provide a deeper understanding of the evolution of the Nigerian military in colonial Nigeria.

Haywood and Clark trace the history of the Royal West African Frontier Force (RWAFF), and attendant social progress over time. They discuss the nature and composition of the colonial army and life in the barracks. While Ukpabi explores in detail the origins of the West African Frontier Force (WAFF). He claims that this could be written in terms of the history of Northern Nigeria from 1897–1906 because they were the martial force. Kirk-Greene’s work provides a rich study on the early colonial barracks located in strategic areas in the country, which he notes was composed along ethnic lines with the Hausa in the majority.

Apart from Madiebo’s detailed study on the civil war, Gutteridge also discusses the origins and nature of African armies,¹⁶⁷ the tragedy of Nigeria,¹⁶⁸ and the political role and motivation of the military in Africa.¹⁶⁹

Gutteridge reiterates the political struggle and ethnic dimension surrounding the site and location of the Nigerian Air Force in Kaduna, which he regrettably called the “tragedy of Nigeria”.¹⁷⁰ The value of the book is the interpretation of geo-politics, and political manipulations by nationalists and their European collaborators seeking relevance in developing nations. Nevertheless, as

¹⁶² HAYWOOD, A., & CLARKE, F.A.S. 1964. *the History of the Royal West African Frontier Force*. Gale and Polden Ltd: Aldershot.

¹⁶³ UKPABI, S.C., 1966. *the Origins of the West African Frontier Force*. *Journal of the Historical Society of Nigeria*, 3(3), 485-501.

¹⁶⁴ KIRK-GREENE, A.H.M., 1964. *A Preliminary Note On New Sources For Nigerian Military History*. *Journal of the Historical Society of Nigeria*, 3(1), 129-147.

¹⁶⁵ MADIEBO, A.A., 1980. *the Nigerian Revolution and the Biafran War*. Fourth Dimension Publishing Company Limited: Enugu.

¹⁶⁶ GUTTERIDGE, W.F., 1969. *the Military in African Politics (Vol. 4)*. Methuen: London.

¹⁶⁷ GUTTERIDGE, W. 1969, Op.Cit.1-7.

¹⁶⁸ Ibid. 60-95.

¹⁶⁹ Ibid. 141-160.

¹⁷⁰ Ibid. 63-64.

informative as these works appear, they do not provide insight into human rights violation during the period as well as truth and reconciliation in Nigeria, the focus of this research.

The informative work of Meredith (2011), *The State of Africa: A History of a Continent* is relevant to this study.¹⁷¹ It is a towering history of modern Africa and provides a holistic view of contemporary issues facing African states. Chapters relevant to this thesis include “Winds of change”,¹⁷² “The coming of tyrants”¹⁷³ and “No condition is permanent”¹⁷⁴ among others.

Generalised works on human rights violation and the Oputa Commission

The third category of works include: Annual Report (1997), A CLO Report on the State of Human Rights in Nigeria,¹⁷⁵ Annual Report (1998), A CLO Report on the State of Human Rights in Nigeria,¹⁷⁶ and de St. Jorre (1972), and *The Nigerian Civil War*.¹⁷⁷ The Human Rights Violation Investigation Commission Report (May 2002),¹⁷⁸ and Shriver (1995), *An Ethic for Enemies: Forgiveness in Politics*¹⁷⁹ are significant because they examine cogent but related themes, particularly on human rights violation and the Oputa Commission. John de St. Jorre provides a detailed analysis of the Nigerian Civil War, which began after British colonial rule. The author offers background to the military regime in Nigeria, which he elaborates on, citing its human rights violations and widespread brutalities.

Also discussing ethics for enemies and forgiveness in politics, Shriver considered too many experts as the primary reason for the failure of the Oputa Commission. Forgiveness, always associated with religious sentiment, acquired a

¹⁷¹ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster: New York.

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ Ibid.

¹⁷⁵ ANNUAL REPORT. 1997. *A CLO Report On the State of Human Rights in Nigeria*. Civil Liberties Organisation: Lagos.

¹⁷⁶ Ibid.

¹⁷⁷ JORRE, J.D.S., 1972. *the Nigerian Civil War*. Hodder and Stoughton: London.

¹⁷⁸ HUMAN RIGHTS VIOLATION INVESTIGATION COMMISSION, REPORT (MAY 2002), *International Context. Abuja: See the Oputa Panel's Report.*
http://www.Nigerianmuse.Com/Nigeriawatch/Oputa/?U=Csf_On_Oputa_Report_01012_005.htm.

¹⁷⁹ SHRIVER, D.W., 1995. *An Ethic For Enemies: Forgiveness in Politics*. Oxford University Press On Demand: Oxford.

new paradigm in his work. Thereby having the author continue to affirm that in the modern context, forgiveness may need to “escape its religious captivity and enter the ranks of ordinary political virtues”.

Other works in this category include that of Yusuf (2007), “*Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria*,”¹⁸⁰ Zehr (1990), *Changing Lenses: A New Focus for Crime and Justice* (3rd ed.)¹⁸¹, Akinyeye (ed.) (2003), *Nigeria and the Wider World in the 20th Century*¹⁸² and Lillian Grissen, *That We May Be One: The Autobiography of Nigerian Ambassador Jolly Tanko Yusuf*.¹⁸³

On his part, Yusuf discusses among others the Human Rights Violation Investigation Commission (the Oputa Commission), and its mandate and contributions to the discipline of “transitional justice and rule of law”. Above all, Yusuf underscores the factors responsible for the establishment of the Commission, and how its mandate was changed during tenure. He then concludes by suggesting guidelines on future attempts at truth and reconciliation in the country. Another valuable contribution is that of Howard Zehr, popularly known as the ‘father of restorative justice,’ which underscores the concept of restorative justice, an important attribute of the Nigerian TRC. The author suggests that “restorative justice requires, at least a minimum consolation that it will address victim’s harms and needs, hold offenders accountable to put right those harms, as well as involve victims, offenders and communities in this process”.¹⁸⁴ Through this discourse, Zehr aptly frames a restorative justice process and procedure, thus providing us with the key to the actual meaning and implications of the idea.

Along the same lines, Akinyeye’s examines contemporary issues of international relations and the place of Nigeria in the wider world.¹⁸⁵ The book has

¹⁸⁰ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria. the International Journal of Transitional Justice*, 1(2), 268-286.

¹⁸¹ ZEHR, H., 1990. *Changing Lenses: A New Focus For Crime and Justice*. Herald Press: Scottdale PA

¹⁸² AKINYEYE, Y. ED. 2003. *Nigeria and the Wider World in the Twentieth Century*. Davidson Press: Ibadan.

¹⁸³ GRISSSEN, L.V. 1995. *That we may be one: the autobiography of Nigerian Ambassador Jolly Tanko Yusuf*. William B. Eerdmans Publishing Company. Op.Cit.

¹⁸⁴ ZEHR, H., 1990. *Changing Lenses: A New Focus For Crime and Justice*. Herald Press, Op.Cit. See Footnote 182.

¹⁸⁵ AKINYEYE, Y. ED. 2003. “Introduction” To *Nigeria and the Wider World*, Op.Cit. See Footnote 182.

bearing to this work, but central is Solomon O. Akinboye's *Nigeria-South Africa Relations in the 20th Century: A Case of Symbiosis and Reciprocity*.¹⁸⁶

Similarly, Grissen's autobiography of Jolly Tanko Yusuf, cogently explores the life and times of this patriot. Tanko was Nigeria's ambassador to Germany, China, North Korea and Sierra Leone. An interesting aspect of his memoir is his fight to defend his faith, which offended the military junta of the day, leading to his incarceration. Other studies on human rights violation, bad governance, insecurity and corruption include that of Oarhe and Aghedo (2010), "The Open Sore of a Nation: Corruption and Internal Security in Nigeria",¹⁸⁷ Oluwaniyi (2011), "Police and Institution of Corruption in Nigeria, Policing and Society",¹⁸⁸ Onuoha (2009), "Corruption and National Security: The Three-Cap Theory and the Nigerian Experience",¹⁸⁹ Ogundiya (2010), "Democracy and Good Governance: Nigeria's Dilemma",¹⁹⁰ and Bello and Odusote (2013), "The Matrixes of Bad Governance, Corruption and Insecurity in Nigeria".¹⁹¹

These authors and their various works examine the dynamics of the multi-dimensional connections between bad governance, corruption and insecurity, and how they underpin the structure of human rights violation and impact negatively on other spheres of life. Their studies employ appropriate theories and concepts to analyse the connection between these phenomena and vices in other spheres of life including human rights. Bello and Odusote also explain the role of constitutionalism in maintaining appropriate human rights culture.¹⁹² Some

¹⁸⁶ AKINYEYE Y ED. 2003. *Nigeria and the Wider World in the 20th Century: Essays in Honour of Professor Akinjide Osuntokun*. Davidson Press: Ibadan.

¹⁸⁷ OARHE, O. AND AGHEDO, I., 2010. *the Open Sore of A Nation: Corruption Complex and Internal Security in Nigeria*. *African Security*, 3(3), 127-147.

¹⁸⁸ OLUWANIYI, O.O., 2011. *Police and the Institution of Corruption in Nigeria*. *Policing & Society*, 21(1), 67-83.

¹⁸⁹ ONUOHA, F. 2009. *Corruption and National Security: the Three-Cap Theory and the Nigerian Experience*. *Nigerian Journal of Economic and Financial Crimes*, 1(2), 1-13.

¹⁹⁰ OGUNDIYA, I.S., 2010. *Democracy and Good Governance: Nigeria's Dilemma*. *African Journal of Political Science and International Relations*, 4(6), 201-208.

¹⁹¹ BELLO, A. AND ODUSOTE, A., 2013. *the Matrix of Bad Governance: Corruption and Insecurity in Nigeria*. in *Proceedings of the 46th Annual Conference of the Nigerian Association of Law Teachers Held Between the 22nd-26th April* (606-643).

¹⁹² Ibid.631-634.

studies consider constitutionalism and appropriate legal structures as the primary instruments of eradicating or minimising human rights violation.¹⁹³

However, they fail to effectively relate this to the proper implementation of the constitution and law enforcement. These works are germane to the study. As mentioned earlier in the chapter, the analysis by Adeyemo (2013),¹⁹⁴ Guaker (2009),¹⁹⁵ Ikhariale (2008),¹⁹⁶ Yusuf (2007),¹⁹⁷ Akhihero (2001/2002)¹⁹⁸ and Kukah (2011)¹⁹⁹ provided clear insights on how these writers perceived the work of the Oputa Commission. Adeyemo described Nigeria's attempts at confronting the past as inadequate, ineffective and a farce. He went ahead to posit that the outbreaks of violence in the Northern part of the country and the resurgence of violence in the Niger-Delta region of the country were because of the absence of prosecutions of perpetrators of human rights violations. Gauker opined that the Commission was a complete failure due to the non-release of its report, Kukah who was a prominent member of the Commission, had a different view, he concluded that beyond the legal arguments canvassed by the government to justify its refusal to officially publish the report of the Commission, the Nigeria state missed an opportunity to come to terms with its destiny. Another writer Yusuf blamed the many setbacks suffered by the Oputa Commission on bureaucratic red-tapisms

¹⁹³ *History of Constitutional Development in Nigerian*, www.djtlawer.Com/History-Nigerian-Constitutional- (Accessed 4 April 2017); *Constitutional and Political Development in Nigeria(Part1)*<https://Waidigbenno.Wordpress.Com/.../Constitution-Development-in-Nigeria-Part-I-the> (Accessed 4 April 2017); IGBUZOR, O., & BAMIDELE, O. (eds.) 2002. *Contentious Issues in the Review of the 1999 Constitution*. Citizens Forum For Constitutional Reform: Lagos.

¹⁹⁴ ADEYEMO, D.D., 2013. *Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt?*. Doctoral Dissertation, University of Western Cape.

¹⁹⁵ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen, Op.Cit. 1-51.

¹⁹⁶ IKHARIALE, M., 2004. the Oputa Reports: An unfinished job. [http://Www.Nigerdeltacongress.Com/Oarticles/Oputa Reports. Htm](http://Www.Nigerdeltacongress.Com/Oarticles/Oputa%20Reports.Htm), Op.Cit. 1-4.

¹⁹⁷ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286.

¹⁹⁸ AKHIHERO P., 2001/2002. *the Constitutionality and Powers of the Human Rights Violations Investigations Commission (Oputa Panel)*, Vol.7.No.1, *University of Benin Law Journal*, Op.Cit. 116-135.

¹⁹⁹ KUKAH, M.H., 2011. *Witness To Justice: An Insider's Account of Nigeria's Truth Commission*. Book Craft., Op.Cit

while Akhihero on his own questioned the constitutionality and powers of the Commission.

Conclusion

The reviewed literature could be said to be adequate for a work of this nature, which has a legal and historical perspective. The choice of literature was also deliberate, even though some works appear to have been published long ago but are closer to the events, compared to the work of revisionist authors who rehearse known events by adding colour. In light of the above, newspaper publications, magazines and oral interviews will be augmented in the body of the work. Similarly, a theoretical framework on truth commissions will continue to evolve as more doctoral theses focus on conflict resolution, peacebuilding and transitional justice in developing countries.

1.13 Summary of chapters and conclusion

This thesis is structured into five thematic chapters and a conclusion.

Chapter One introduces the study. It provides background by highlighting the purpose of the study, aim and objectives, problem statement, research questions, research hypothesis, operational definition of terms, significance of the study, methodology and justification, limitations of the study, and the literature review.

Chapter Two examines the efforts of Nigerian people to entrench democratic rule and extricate the country from being a pariah state.²⁰⁰ The move became expedient following the various allegation of human rights violation,²⁰¹ extrajudicial killing,²⁰² and the indifference of the military class to the yearnings of the Nigerian people.²⁰³ It therefore investigates the nature of nationalistic struggle

²⁰⁰ FAWOLE, W.A., 2003. *Nigeria's External Relations and Foreign Policy Under Military Rule, 1966-1999*. Obafemi Awolowo University Press: Ile Ife.

²⁰¹ ANNUAL REPORT 1998. *A Civil Liberty Report On the State of Human Rights in Nigeria*, 74-75. See Also, *the Guardian Newspaper*, December 19, 1998. More detail in *Sunday Punch*, May 23, 1999, 2-39.

²⁰² ANNUAL REPORT 1997. *A Civil Liberty Report On the State of Human Rights in Nigeria*, 6-7. See Also *Human Right Watch*. 2007. *Criminal Politics: Violence, 'God-Fathers' and Corruption in Nigeria*, 19(16).

²⁰³ BABAWALE, T., 2006. *Nigeria in the Crises of Governance and Development: A*

in the colonial state and an imbalance in Nigerian federalism.²⁰⁴ The study also interrogates the factors that influence and sustain the hegemony of power of military rulers in Nigeria, as well as the interrelated role of ethnicity and class in the transition experiment. To what extent did the Nigerian civil war contribute to the elongation of military administration and by extension the transition to civil rule? Can it be safely argued that prolonged military rule and attendant human rights violations expanded the growth and development of civil society, human rights organisations and other non-governmental organisation (NGOS)²⁰⁵ these are the main questions debated in this chapter. The sub-themes discussed include an overview of Nigerian pre-colonial history, the first republic, tension and political disintegration, the emergence of military rule in Nigeria, democracy in Nigeria, among others, and the chapter's summary and conclusion.

Chapter Three highlights the human rights situation in Nigeria during military regimes. It will be informative to discuss why so much gross violation of human rights occurred in the country during military rule even though Nigeria had ratified most of the international human rights instruments. The study will interrogate why the instruments have not translated well into domestic law for the protection of human rights in the country.²⁰⁶

Significantly, the failure of human rights culture in the country and the evolution of the State in the military and post-military period, as well as the pursuit of state security, and law and order to the detriment of the promotion of the regime and rights will be analysed. Sub-themes discussed in this chapter include military and human rights violation in Nigeria, 1966–1999,²⁰⁷ the impact of military

Retrospective and Prospective Analyses of Selected Issues and Events, Education, Labour ' and the Economy. Political and Administrative Resource Centre: Lagos.

²⁰⁴ COLEMAN, J.S., 1958. *Nigeria: Background To Nationalism*. Univ of California Press: Berkeley. Also See NNOLI, O., 1978. *Ethnic Politics in Nigeria*. Forth Dimension: Enugu. JIBO, M., GALADIMA, H. S. & SIMBINE, A.T., 2001. *Ethnic Groups And Conflicts in Nigeria: the Northcentral Zone of Nigeria. the Lord's Creation*. Joseph, J.A. 1999. *Democracy and Prebendal Politics in Nigeria*, Op.Cit.

²⁰⁵ ONUOHA, B. AND FADAKINTE, M.M., 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press: Lagos.

²⁰⁶ BEST, S.G. ED., 2006. *Introduction To Peace and Conflict Studies in West Africa: A Reader*. Spectrum Books: Ibadan.

²⁰⁷ ANNUAL REPORT 1998. *A Civil Liberty Report On the State of Human Rights in Nigeria, 44-45. It Was During This Period that Olisa Agbakoba, Senior Advocate of Nigeria, Was Manhandled By Abacha's Men.*

rule on police and other agencies, the minority question and Ogoni human rights violations,²⁰⁸ and human rights under democratic dispensation, followed by the chapter's summary and conclusion.

Chapter Four investigates past human rights violations in Nigeria. The political atmosphere in Nigeria, prior to General Sani Abacha's death, was not only frightening but also unstable.²⁰⁹ The regime had been the subject of criticism by the international community for human rights violations.²¹⁰ It was suspended from the Commonwealth for this and other reasons. But, more importantly, for the execution of Ken Saro-Wiwa under a dubious system of justice.²¹¹ Nigeria was therefore on the verge of disintegration on the eve of General Abacha's death.

It was the series of events under his government that triggered the demand for a 'truth' commission to investigate human rights violations under the military regime. As previously mentioned the long period of military rule in Nigeria led to a progressive rise in gross violation of human rights, which ultimately led to the call for some form of accountability for abuse that had occurred during this period.

Before undertaking an assessment of the work of the Oputa Commission, it is imperative to highlight the theoretical framework that underpins this study, (i.e. Truth and Reconciliation Commissions). The theories include retributive and restorative justice, criminal and non-criminal sanctions, amnesty or amnesia, acknowledging the past, compensation, restitution and rehabilitation. Sub-themes in this chapter include the origins, aim and objectives of the Oputa Commission, its mandate and select cases of human rights violations, the theory of transitional justice, compensation, restitution and rehabilitation, and an overview of comparative regional experiences in transitional justice, followed by the conclusion.

²⁰⁸ ANNUAL REPORT 1997. *A Civil Liberty Report On the State of Human Rights in Nigeria*, 188-191. Also See *the Guardian*, September 26, 1998, "Ogoni 20: Back From the Lion's Den", 18-19.

²⁰⁹ ROBINSON, S. 1999, (December 27) "Olusegun Obasanjo", *Time Magazine*.

²¹⁰ U.S. Department of States (1999) *Nigeria Country Report On Human Rights Practices For 1990*, Bureau of Democracy, Human Rights, and Labour.

²¹¹ BIRNBAUM, M., 1995. *A Travesty of Law and Justice: An Analysis of the Judgement in the Case of Ken Saro-Wiwa and Others*. Article 19.

Chapter Five examines the lessons of the Oputa Commission for countries in transition. This chapter attempts to learn from Nigeria's experience of transitional justice.²¹² This may benefit other countries in transition from a violent past, repression and gross violation of human rights, such as Ghana, Sierra Leone, Liberia, Togo, and Guinea Bissau, Kenya, South Africa, Rwanda, all of which share similar stories to Nigeria. Though it is neither desirable nor possible to impose a certain model on any other country, it is important to use the experience of one country to inform and influence others who's past are not too dissimilar to that of Nigeria.²¹³ Some of the broader issues before the Oputa Commission which require insight include the following: whether the absence of any form of amnesty in the Nigeria process would have strengthened or weakened the process²¹⁴; whether more truths would have been revealed if perpetrators had an incentive such as immunity from prosecution²¹⁵; and truth versus justice: what choices are available in a transitional justice process.²¹⁶

Chapter Six concludes the thesis. It relates findings to the aims, set out in the general orientation of the study. This thesis presents one of the known major academic works on Oputa Commission, as there are few detailed studies that has been conducted on transitional justice in Nigeria.²¹⁷ The research is timely and the topic apt because of the understanding it provides in conflict and peacebuilding studies. Here the conclusions on the various issues that made the Oputa Commission relevant for Nigeria will be highlighted. A major lesson for those holding public office in the country is that there is a day to account for their

²¹² FOMBAD, C.M. 2011. *Transitional Justice in Africa: the Experience With Truth Commissions*. Hauser Global Law School Program, http://www.nyulawglobal.org/Globalex/Africa_Truth_Commissions.htm (Accessed on the 6th of August 2011).

²¹³ BAKINER, O., 2013. *Truth Commission Impact: An Assessment of How Commissions Influence Politics and Society*. *International Journal of Transitional Justice*, 8(1), 6-30.

²¹⁴ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen; PERRY, J., & SAYNDEE, T.D. 2015. *African Truth Commissions and Transitional Justice*. Lexington Books: Lanham.

²¹⁵ MALLINDER, L., 2009. *Indemnity, Amnesty, Pardon and Prosecution Guidelines in South Africa*. *Institute of Criminology and Transitional Justice, Queens University, Belfast*.

²¹⁶ JAPPAH, J.V. AND SMITH, D.T., 2013. *Transitional Justice: Prioritizing Truth Commissions Or International Tribunals To Ensure Healing and Reconciliation*. *Journal of International & Global Studies*, 5(1), 1-15.

²¹⁷ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286.

actions in office. That day may come long after they have left office, as is the case with Generals Buhari, Babangida and Abubakar.²¹⁸

The military rule was carpeted as no alternative even for the worst democratic government.²¹⁹ The study concludes that the military more than any other institution in the country contributed to the decay of the Nigerian State.²²⁰ The military it must be noted had found ready ally in the political elites who collaborated with them at all times to truncate democracy.²²¹ The traditional rulers in Nigeria did not do well for democracy, as they have always been willing tools in the hands of the military as they usually accept the military's plan for and viewpoint of democracy.²²² Instead of standing for democracy, they rather used any opportunity they had to demand an increase in their eroded powers and spheres of influence.²²³ The activities of other institutions of the Nigerian State were also reviewed. The work establishes some findings, recommendations and contributions to knowledge that could move the country forward.

²¹⁸ ADEYEMO, D.D., 2013. *Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt? Doctoral Dissertation*, University of Western Cape.

²¹⁹ ODUBELA, T.O., 2007. *Contextualized Qualitative Research in Nigeria: Coercive Isomorphic Pressures of the Socioeconomic and Political Environment On Public Relations Practices Doctoral Dissertation*, University of Florida.

²²⁰ EHWARIEME, W., 2011. *the Military Factor in Nigeria's Democratic Stability, 1999-2009. Armed Forces & Society*, 37(3), 494-511.

²²¹ BIENEN, H., 1978. *Military Rule and Political Process: Nigerian Examples. Comparative Politics*, 10(2), 205-225.; SKLAR, R.L., 2015. *Nigerian Political Parties: Power in An Emergent African Nation (Vol. 2288)*. Princeton University Press: Princeton.

²²² JEGA, A., 2001. *Democracy in Nigeria: Concepts, Representations, and Expectations. Nigeria During the Abacha Years, 1993-1998*.

²²³ SKLAR, R.L., 1979. *the Nature of Class Domination in Africa. the Journal of Modern African Studies*, 17(4), 531-552.

CHAPTER TWO

POLITICAL TRANSITION SINCE COLONIAL NIGERIA

2.1 Introduction

This chapter focuses on Nigeria's political transition in colonial and post-colonial periods. The debate is important because it stands to provide insight into the efforts of the Nigerian people to participate in governance, as well as decide their fate regarding democratic principles. The purpose of this chapter therefore is to critically examine remote and immediate causes of ethnic and prebendal politics,¹ which is largely enshrined in the works of Joseph (1999) in chapter one in 'Democracy and Prebendal Politics in Nigeria: The Rise and Fall of the Second Republic',² religion and domination, as well as the effect of the transition on the people and the nation.³ The challenges of political transition in Nigeria can be evidenced in power relations and three-cornered contests among northern, western and eastern Nigerian political classes in the years of cultural nationalism⁴ and the independence era which according to the discussion in the literature reviewed, laid the foundation for corruption and tribal sentiments, thereby corroborating the arguments of Nnoli⁵ and Coleman⁶ respectively. Specifically, this chapter discusses the crisis of transition politics during military rule and human rights violations.

The theme of this chapter is significant in the overall analysis of the thesis and on the grounds that political transition had long posed a challenge to the unity

¹ JOSEPH, R.A. 1999. *Democracy and Prebendal Politics in Nigeria*, Op. Cit. Also See Nnoli, O. 1978. *Ethnic Politics in Nigeria*, Op.Cit.

² Ibid. in 224.

³ LAKEMFA, O. (2009, NOVEMBER 17). "the Flaw in British Handover To North". *Vanguard Newspaper*, 43-44.

⁴ FALOLA, T., MAHDI, A., UHOMOIBHI, M., & ANYANWU, U. 1991. *History of Nigeria, Vol.3, "Nigeria in the 20th Century"*. Longman Nigeria: Ikeja, 55. Also See OLUKOJU, A. 1997. *thedynamics of Cultural Nationalism in Colonial Nigeria*, in OSUNTOKUN, A., & AND OLUKOJU, A. eds. *Nigerian Peoples and Cultures*. Davidson Press: Ibadan, 296-307; Schwarz, F.A.O. *Nigeria: the Tribes, the Nations Or the Race: the Politics of Independence*. USA: Massachusetts Institutes of Technology, 75-81.

⁵ Ibid. 23.

⁶ Ibid.

and progress of the Nigerian State. Indeed, Nigerian communities are known to have developed indigenous political and socio-economic life before the advent of British colonialists. Indeed, it was these structures that sustained their integration, pattern maintenance and overall social system.⁷ Therefore one can safely say that colonial rule did not only distort the social system of the people but truncated the political culture of the communities including their boundaries.⁸ The analysis by John de St. Jorre on the Nigerian Civil War reinforces the argument canvassed here. The effects of this development on the people in particular and the nation in general cannot be overlooked. This development created major social division, agitation and ethnic politics. Therefore, a discussion of the effects of ethnic politics on the survival of democracy is or seems to be highly desirable.⁹ As can be seen from the works of Nnoli (1978) *Ethnic Politics in Nigeria*,¹⁰ and in Coleman's (1958) work on Nigeria: *Background to Nationalism*.¹¹

On a broad spectrum, it contributed to corruption,¹² which is rooted in the works of Oarhe and Aghedo (2010), "The Open Sore of a Nation: Corruption and Internal Security in Nigeria",¹³ Oluwaniyi (2011), "Police and Institution of Corruption in Nigeria, Policing and Society",¹⁴ Onuoha (2009), "Corruption and National Security: The Three-Cap Theory and the Nigerian Experience",¹⁵ discussed in chapter one, underdevelopment of the nation and undemocratic behaviour of the political class. Above all, corruption contributed to the problems of political transition that brought about military rule from 1966 to 1999 which was characterised by human rights violations.

⁷ FALOLA, T., MHADI, A., UHOMOIBHI, M., & ANYANWU, U. 1993. *History of Nigeria, Vol.1, "Nigeria Before 1800 AD"*. Longman Nigeria Ltd: Ikeja, 57-71.

⁸ See AKINYELE, R.T., 2013. *Lines and Space in Human Affairs: Minorities and Marginals*.

⁹ SALAWU, B. AND HASSAN, A.O., 2011. *Ethnic Politics and Its Implications For the Survival of Democracy in Nigeria*. *Journal of Public Administration and Policy Research*, 3(2), 28-33.

¹⁰ Ibid.

¹¹ Ibid.

¹² LAWAL, A.A., 2006. *Corruption in Nigeria: A Colonial Legacy. Inaugural Lecture delivered At the University of Lagos*. Also See AFIGBO, A.E., 1974. *Indirect Rule in South-Eastern Nigeria: the Era of Warrant Chiefs, 1891-1929*. *Tarikh*, 4(4), 11-24.

¹³ Ibid.

¹⁴ Ibid.

¹⁵ Ibid.

This chapter is imperative in contemporary debate because the political class has rarely thought it wise to initiate a national debate on the tottering, nascent democracy in Nigeria, coupled with the clamour in some quarters for the return of military rule and impunity,¹⁶ A case that is also highly presented by Ojiako in 1979, in his “13 Years of Military Rule of 1966–1979”.¹⁷

These among others are salient issues that will shed light on the factors and forces that shaped the colonial state and its implications in post-colonial Nigeria, which eventually led to endless transition politics in relation to the military and human rights violations that heralded the Oputa Commission.

Why was it difficult for ethnic regions to harness their diversity and forge a common political transition, even in the era of decolonisation, instead of dwelling on ethnic politics, social exclusion and hegemony caused by colonial administrators? To what extent did politicians attempt to correct the political imbalance in colonial and post-colonial Nigeria? These are some of the questions and issues this chapter will attempt to address.

Against this backdrop this chapter is divided into three main parts: Nigerian history before colonial rule; background to the evolution and development of political transition in Nigeria; and finally, political transition of the military government and its effect on ethnic and prebendal politics¹⁸ in post-colonial Nigeria. The analysis attempts to link the chapter to the central theme of the thesis, which is accountability for past events and human rights violation that led to the establishment of the Oputa Commission. Having said this, it is imperative therefore to undertake a general overview of the immediate events and situations¹⁹ that characterised the politics of transition in Nigeria before embarking on detailed analysis.

¹⁶ ADEKOYA, A. 2009. *Wanted: Action On High Points of Achebe Colloquium Resolutions*, , December 22, 46.

¹⁷ Ibid.

¹⁸ JOSEPH, R.A., 2014. *Democracy and Prebendal Politics in Nigeria (Vol. 56)*. Cambridge University Press: Cambridge. See Also NNOLI, O. 1978. *Ethnic Politics in Nigeria*. Fourth Dimension Publishers Ltd: Enugu.

¹⁹ UWAJAREN, W. (1995, 26 JUNE). “Season of Anxiety”, *News Magazine*, 18.

The impact of political transition in modern Nigeria cannot be overlooked.²⁰ It began with the Gowon administration in 1967 and continued till the end of military rule in 1999. Indeed, the transition politics of the military reached its heights with the annulment of June 12, 1993 elections by the Babangida administration,²¹ which led to political and economic sanctions from the Commonwealth of Nations and their European counterparts. The situation was further aggravated by the Abacha's regime following the judicial murder of Ken Saro-Wiwa and his kinsmen,²² assassination of Kudirat Abiola and Pa Alfred Rewane, and others allegedly by Abacha's goons.²³ Thus Nigeria lost her position in the comity of nations as the junta increased its human rights violations, clamping down on the media and opposition groups, including civil society coalitions. Nigeria therefore degenerated into a pariah state,²⁴ with different ethnic groups calling for secession and war, to address the injustices against their people.

The internal disorder at that time was frightening as European nations warned their citizens against travelling to Nigeria until the situation improved. With the death of Abacha on June 8, 1998²⁵ and the coming to power of General Abdusalami Abubakar, tension was reduced as he made promises to return the country to peace, democracy and respect for human rights²⁶, A situation analysed by Ogundiya in 2010, in "Democracy and Good Governance: Nigeria's Dilemma".²⁷

²⁰ SEE OJIAKO, O.O. 1980. *Thirteen Years of Military Rule*. Daily Times Publication: Lagos. Also See FALOLA, T., 1991. *History of Nigeria: Nigeria in the Twentieth Century*. Longman Nigeria. Op.Cit.

²¹ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster: London.

²² FAWOLE, W.A. 2012. "Nigerian Foreign Policy: the Search For A New Paradigm," in IMOBIGHE, T.A., & ALLI, W. eds. *Perspectives On Nigeria's National Politics and External Relations: Essays in Honour of Professor Bolaji Akinyemi*. University of Ibadan Press Plc: Ibadan, 150-169.

²³ ADENIYI, O., 2005. *the Last 100 Days of Abacha: Political Drama in Nigeria Under One of Africa's Most Corrupt and Brutal Military Dictatorships*. Book House Company: Lagos, 211-235.

²⁴ FAWOLE, W.A., 2003. *Nigeria's External Relations and Foreign Policy Under Military Rule, 1966-1999*. Obafemi Awolowo University Press: Ile Ife. 221-305.

²⁵ OGWU, U.J., & OLUKOSHI, O.A., eds. 2002. "Editorial Note" in *Economic Diplomacy of the Nigerian State*. Frankard Publishers Ltd: Lagos, I.

²⁶ FAWOLE, W.A., 2003. *Nigeria's External Relations and Foreign Policy Under Military Rule, 1966-1999*. Obafemi Awolowo University Press: Ile Ife, 221-227.

²⁷ Ibid.

The government announced the death of Chief Abiola, the acclaimed winner of June 12, 1993 presidential elections. This prompted eminent groups to embark on a peace building mission across the country to settle the myriad of problems including human rights violation facing the nation. It was in consideration of the numerous challenges confronting the nation that prompted the establishment of the Oputa Commission as a truth and reconciliation commission to address these issues.

A cursory look at the remote causes of political transition in Nigeria reveals that from the beginning, the Nigerian State was confronted by the following factors: The Caliphate institution and hegemony, the British colonial agenda for the Muslim controlled north against the Christian dominated south,²⁸ the backwardness of Northern Nigeria caused by the rejection of western education and civilisation,²⁹ and the forces of a classical, indirect rule system which nurtured the politics of regionalism in 1946.³⁰ It should be noted that the latter is demystified to inform this study by Akpofure & Crowder in 1966 in the chapters on consular rule, loss of sovereignty and the origin of regionalism.³¹ It was this development that gradually led to the politics of transition, military rule and human rights violations that culminated in the need for Oputa Commission to address the ills of the past and chart a way forward for the nation.

Nigeria's quest for political participation began in the colonial state. Not many people knew the best form of government for the country and regions at the time, probably due to its inherent composition and traditional political culture

²⁸ OSAGHAE, E.E. & SUBERU, R.T. 2005. *A History of Identities, Violence and Stability in Nigeria*. Oxford: Centre For Research On Inequality, Human Security and Ethnicity. University of Oxford; COLEMAN, J.S. 1986. *Nigeria: Background To Nationalism*. Ilupeju Press Ltd: Benin City, 322.

²⁹ COLEMAN, J.S. 1986. *Nigeria: Background To Nationalism*, Op.Cit.140; Olusanya, G.O. 2012. "Constitutional Development in Nigeria, 1861-1960" in IKIME, O. ed. *Groundwork of Nigerian History*. Heinemann Educational Books Ltd: Ibadan., 518-544. Also See Abubakar, SA'AD. "the Northern Provinces Under Colonial Rule: 1900-1959". 447-481. in *Groundwork of Nigerian History*. ed, OBARO IKIME. Heinemann Educational Books Ltd: Ibadan, 1980. Repr., 2004.

³⁰ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster: New York.

³¹ Ibid.

on the one hand, and the spirit and theory of colonialism on the other. In successive years, the British succeeded in creating the constitution of regionalism and ethnic politics, which aggravated social division and sectionalism in the Nigerian political space. At first, the consequences of this development were not very clear to the Nigerian political elite, because they were in a hurry to achieve self-determination until the military intervened in the 1960s.³² Since 1966 when the military made incursions into Nigerian politics, there has been one form of political transition or another.

2.2 Understanding political transition relevant to the thesis

What is political transition? A clear understanding of this concept is important, since it is the fulcrum upon which the theme revolves. Political transition, according to Onuoha (2002), is the process of handing over political power to an elected government and referred to as “transition” (to civil rule).³³ Political transition as it relates to this study is the totality of efforts, postponement, abuse of power and deceit by the Nigerian military in the process of handover of power to a civilian democratic government. As indicated earlier, transition politics in modern Nigeria began with General Yakubu Gowon’s regime from 1966 to 1975. Since that period, the nation has been involved in one form of transition³⁴ or another without implementing all the schedules of the programme, or attaining desired objectives³⁵ until 1999, when the idea for a truth commission was set up to resolve the problems.

In the intervening years of military rule, it was discovered that the Nigerian military was not ready to hand over power to an elected civilian government, because of accumulation of wealth (soldiers and oil),³⁶ the comforts of office, and selfish ambitions. A holistic view of this dilemma led Professor Abiodun Odusote

³² MEREDITH, M. 2011. *the State of Africa*, 199-203. Op.Cit.

³³ ONUOHA, B. AND FADAKINTE, M.M., 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press: Lagos.

³⁴ Ibid.

³⁵ Ibid.

³⁶ PANTER-BRICK, S.K. ED. 1978. *Soldiers and Oil: the Political Transformation of Nigeria*. Frank Cass: London.

to describe it as the matrixes of bad governance, corruption and insecurity in Nigeria.³⁷ Nigeria therefore succumbed to prolonged military rule for about 29 years, without direction or vision other than to take power and commence a whole new political transition agenda that aggravated human rights violations.

Corroborating this view, Joseph (2014) observes that: "...the effect of rule by the military government was to accentuate the centrality of the State in the nation's economic system and thus in a circular fashion, to fuel the various features of prebendalism".³⁸ Onuoha and Fadakinte (2002) also note that the confidence in perpetuating power stemmed from the fact that the military would have discovered that the first and second republics of civilian government did not positively contribute to democratic cultural practice, accountability, good governance, and democratic learning and practice, to mention a few.³⁹ In order to accomplish the process of transition, a new military government would usually set a timetable or programme to bring the military's understanding of transition programme to a civilian government.⁴⁰ This stemmed from the factors that contributed to the Nigerian Civil War and the entry of the military into politics⁴¹ that is listed in the preceding chapter by Miners in 1971.

The colonial period was experiential because British colonialists had divided Nigeria into three ethnic compositions: northern, western and eastern regions following Arthur Richard's Constitution of 1949.⁴² This development created a state of hegemony, which influenced the three major regions over their people. Therefore, the regions operated with greater autonomy post-independence in 1960, with the dominant groups of Hausa/Fulani, Yoruba and Igbo controlling politics and the economy in their respective regions.⁴³ The

³⁷ BELLO, A. AND ODUSOTE, A., 2013. *the Matrix of Bad Governance: Corruption and Insecurity in Nigeria*. in *Proceedings of the 46th Annual Conference of the Nigerian Association of Law Teachers Held Between the 22nd-26th April*, 606-643.

³⁸ JOSEPH, R.A., 2014. *Democracy and Prebendal Politics in Nigeria (Vol. 56)*. Cambridge University Press: Cambridge.

³⁹ ONUOHA, B. AND FADAKINTE, M.M., 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press: Lagos.

⁴⁰ Ibid.

⁴¹ Op.Cit. 155-226.

⁴² ASIWAJU, A.I. 1997. "*the Evolution of Nigerian Culture*". in OSUNTOKUN, A., & OLUKOJU, O. eds. *Nigerian Peoples and Culture*, 22-42.

⁴³ Details IN FALOLA, T. 1989. *History of Nigeria, Vol.1, "Nigeria Before 1800 A.D"*.

effect of this development was the challenge of political transition that brought about military rule and human rights violations that culminated in the Oputa Commission.

Despite the seeds of ethnicity that germinated over a long period with each of the three forces competing for relevance and control over the other, no single ethnic group commanded a majority to gain political control of the centre without the support and alliance of one of the dominant groups. In the first republic the Hausa/Fulani forged a marriage of convenience with the Igbo, which ended in the 1966 coup in which the majority of casualties were Hausa/Fulani leaders.⁴⁴ Consequently, following the counter coup of July 1966, the program against the Igbo and the civil war, the Hausa/Fulani who fought alongside the Yoruba's formed the core of the ruling military class that was to hold Nigeria hostage for the duration of military rule.⁴⁵ It is therefore the reason Ojiako in 1979, in the first chapter under reviewed literature decided to explore the life of Gowon and his connection to military rule and his political engineering, and then highlights the democracy agenda, which was truncated by the Dimka's coup of 1976.⁴⁶

It was transition politics in Nigeria that brought civil society into conflict with the military. Their role became timely in the dark years of military rule, as Nigerians were not only tired, but also dissatisfied with prolonged military rule and their deceptive promises of transition to democracy. Therefore, the military deployed unorthodox strategies, which aggravated human rights violations to maintain state power.⁴⁷ Comparatively, a reflection on colonial times reveals that the same tactics has been used by the colonial administration to hold on to power in the heat of cultural nationalism and agitation for

Longman Nigeria Ltd: Ikeja, 122-125.

⁴⁴ NWANERI, F. (2016, JULY 29). "July 29: A Significant Date in Nigeria's History". *New Telegraph*, 11-16. Also See SIOLLUN, M., 2009. *Oil, Politics and Violence: Nigeria's Military Coup Culture (1966-1976)*. Algora Publishing: New York.

⁴⁵ EYA, W. (2016. JANUARY 15), "January 15, 1966 Coup: Exercisedamisa", *Daily Sun Newspaper*, 23-26.

⁴⁶ Op.Cit.

⁴⁷ *the Use of Special Military Tribunals in the Enforcement of Public Accountability Creates A Major Social Difficulty. It De-Emphasises Judicial Control By Virtue of the Suspension of All Legislative Assemblies.* See FALOLA, T. 1991. *History of Nigeria*, Vol.3, Op.Cit.193.

independence. The military, as the colonialists had done, resorted to a clampdown on the media, political associations, human rights organisations and perceived enemies of government to quell dissent and maintain state power.⁴⁸ The effect of this was the challenges of political transition that brought about military rule and human rights violations that culminated in the Oputa Commission.

The military junta introduced several draconian decrees to silence dissent, violate human rights and perpetuate power against the aspirations of Nigerians. Pro-democracy and human rights activists were targeted by the junta who used secret tribunals and draconian decrees to subject them to long jail terms.⁴⁹ These inhumane incidents are covered in the chapters on military administration, 1966–1979 and the second republic, 1979–1983 which provide a rich study on activities of the military junta and attendant human rights violation in the country,⁵⁰ as evidenced in the preceding discussion.

In some cases, military regimes, especially that of General Sani Abacha resorted to political assassinations to silence critics. The courts were not spared as the military had to introduce decrees that effectively barred the courts from questioning any actions carried out under a decree.⁵¹ This affront on the judiciary showed how much the Nigerian State had degenerated in protecting the rights of its citizens. The implication of the assault on the judiciary was so severe that there was no longer any state institution to act as a defence to protect the rights of Nigerians. Therefore, all state institutions were weakened, leaving citizens without any protection from abuse. This development as noted in this chapter left pro-democracy and human rights activists to the mercy of roving bands of military junta and their security operatives, who unleashed terror in their desire to maintain state power for the junta.

⁴⁸ OGBONDAH, C.W., 2000. *Political Repression in Nigeria, 1993-1998: A Critical Examination of One Aspect of the Perils of Military Dictatorship*. *Africa Spectrum*, 35(2), 231-242.

⁴⁹ ANNUAL REPORT 1997. *A Civil Liberty Report On the State of Human Rights in Nigeria*. Also See *Special Report On the State Security (Detention of Persons) Decree No.2 of 1984; Annual Report On Human Rights in Nigeria, 1993; Human Rights in Retreat: A Report On the Human Rights Violation Human Rights Violation of the Babangida Regime, 1993*.

⁵⁰ Op.Cit. Vol.3.

⁵¹ OJIAKO, J.O., 1979. *13 years of military rule [in Nigeria]*. Daily Times of Nigeria: Lagos

2.3 Evolution and development of political transition in Nigeria

This section explores the evolution of political transition in colonial Nigeria and the attendant effect post-independence. This is important because of its legacy in colonial and post-colonial periods, particularly the military incursion into politics from 1966 to 1999 and the associated human rights violations. The reason for this approach is to show that British colonial operators did not have a pan Nigerian agenda.⁵² This discussion is also critical because a lot of people did not know that the problems militating against Nigeria's political transition began in the colonial state, simply because British colonisers wanted to set the regions apart⁵³ and exploit the opportunities to their advantage.⁵⁴

This section establishes the fact that the European political model was not ideal for some African societies, especially Nigeria, with different regional ethnic groups. It also demonstrates that constitutional developments in the colonial state did not accommodate the aspirations of all interest groups,⁵⁵ hence the problems for political transition, ethnicity and hegemony, which worked against all forms of development.

Ofeimun (1995)⁵⁶ suggests that:

"On a matter of principle, such as the necessity for democracy to be the basis for interaction between all nationalities, there should be a point at which hegemony must be given no comfort or quarters. The presumption that Nigeria must be broken to stop a tyrannical hegemony from triumphing or that the future of Nigeria needs to be measured in military explosions for hegemony to be defeated is simply a contingent issue. Not a matter of principle".

⁵² MEREDITH, M. 2011. *the State of Africa. A History of A Continent*, Op.Cit.75-77.

⁵³ COLEMAN, J.S. 1986. *Nigeria: Background To Nationalism*, Op.Cit.4-5.

⁵⁴ AKINYELE, R.T., 1997. *the Growth of Nationalism and the Political Evolution of Nigeria. Nigerian Peoples and Cultures*, 275.

⁵⁵ OLUSANYA, G.O. 2012. "Constitutional Developments in Nigeria, 1861-1960," in IKIME, O., ED. *Groundwork of Nigerian History*, Op.Cit. 518-544.

⁵⁶ OFEIMUN, O., 1995. *the Yoruba and the Rest of Us. the News*, 26, 1995.

From the outset, the British divided society and sowed seeds of discord and rancour amongst the major ethnic groups.⁵⁷ Owing to this ethnic grouping, Kirk-Greene's work provides a rich study on the early colonial barracks located in strategic areas in the country, which he notes was composed along ethnic lines with the Hausa in the majority as discussed in the preceding chapter. They also exploited the power of religion to cause disunity among religious groups, which was not ideal in intergroup relations. Arguably, if the various ethnic groups were united and directed towards one vision, it might not have been possible for the colonialists to take the resources of the colonies for their benefit.⁵⁸

But more importantly was the fact that the divide and rule policy employed by the British worked because of the pre-colonial setting which they inherited, and therefore exploited the use of divide and rule, coercion and human rights violation to intimidate those who opposed their agenda. Also, the hegemonic influence in Northern Nigeria and the interplay of religion⁵⁹ allowed them to effectively adopt colonial rule,⁶⁰ As discussed by Obaro Ikime's edited work in 2012; part 4 of the book covers Nigeria in the twentieth century, is most valuable to this study, particularly, Tamuno's "British Colonial Administration in Nigeria in the Twentieth Century", and "The Nationalist Struggle for Independence".⁶¹ A recap has already presented in the literature review.

Records suggest that political transition in a colonial state was arranged to suit ethnic groups, since they were composed of diverse identities, social origins, language, traditions and cultures. The effect on the nation was political division, ethnic sentiment, military incursion and transition politics characterised by human rights violations. It was hoped that the Oputa Commission would address the

⁵⁷ COLEMAN, S. C. 1986. *Nigeria: Background To Nationalism*. Ilupeju Press Ltd: Benin City., 44- 45.

⁵⁸ TAMUNO, T.N. 2012. "British Colonial Administration in Nigeria in the 20th Century," in IKIME, O., ED. *Groundwork of Nigerian History*, Op.Cit.393-409.

⁵⁹ BANDE, T. M. 2012. "the Nigerian Federal System and the Challenges of Foreign Policy-Making". in IMOBIGHE, T.A., & ALLI, W.O. eds. *Perspectives On Nigeria's National Politics and External Relations: Essays in Honour of Professor A. Bolaji Akinyemi*. University Press: Ibadan, 75-89.

⁶⁰ COLEMAN, S. C. 1986. *Nigeria: Background To Nationalism*. Ilupeju Press: Benin City Ltd.,36-41. Also See CROWDER, M. 1966. *the Story of Nigeria*. Faber and Faber Ltd: London, 238-241.

⁶¹ Ibid.

challenges created by the military junta. Ten ethnic groups accounts for about 80 percent of the population of Nigeria; therefore, the diversity of the country, rather than being its strength appears to have hindered development and progress. Most geographical zones (i.e. their histories and traditions) were related to external influences,⁶² while others had complex systems of government independent of external contacts.⁶³ In a country of diverse strengths, such diversity would have been positively exploited to grow the economy and develop the country, but the reverse was the case in Nigeria. Nigerian diversity rather than being its strength has been a source of stiff competition and bitter rivalry amongst different ethnic groups.⁶⁴ Therefore it was earlier noted in the chapter one, this is an affirmation that the interesting aspect of these accounts is the argument that Nigeria's crises had its roots in ethnic politics. The two chapters in Coleman's book additionally put a seal to this argument and were listed in chapter one as Ndukaeze Nwabueze's "Towards a Wider Understanding of Inter-group Relations and Mark Chabad's "South Africa: The Challenge of Building a Rainbow Nation".

Indeed, the Nigerian experiment shows that each ethnic group has used their strength to fight and work against each other because there is no pan Nigerian loyalty unlike some other countries.⁶⁵ This chapter establishes the fact that the loyalty of the people lies with their ethnic groups rather than their country. This seemed to have been one of the factors that militated against Nigeria's political transition in colonial and post-colonial periods that eventually aggravated human rights violations.

The explanation for this shambles can be found in the amalgamation of Nigeria and its religio-political groups that formed the bedrock of ethnicity and

⁶² CROWDER, M., Op.Cit. 35-37. See MOAGENE, O. 1991. *Know Your Country Series, Vol. 1, "the Hausa and Fulani of Northern Nigeria"*, 8-10.

⁶³ CROWDER, M., 1966. *the Story of Nigeria*. Faber and Faber. Op.Cit. 33-34. *This Is Particularly Common With the People of the Niger Delta Region and Upland Igbo Society. Their Culture and Traditions Are Unique Because It Was Evolved and Developed By the People Unlike Those of the Hausa, Yoruba and Bini Who Claim Descent From the Arab World.*

⁶⁴ ODEYEMI, J.O., 2014. *A Political History of Nigeria and the Crisis of Ethnicity in Nation-Building*. *International Journal of Developing Societies*, 3(1), 1-12.

⁶⁵ SALAWU, B. AND HASSAN, A.O., 2011. *Ethnic Politics and Its Implications For the Survival of Democracy in Nigeria*. *Journal of Public Administration and Policy Research*, 3(2), 28-33.

regionalism.⁶⁶ Another factor that contributed to the situation was the fear of religious crisis, which made the Caliphate reach out to the British authorities not to extend Christianity and Western education to the Islamic society of Northern Nigeria⁶⁷ where Sharia and fuqaha had been successfully established.⁶⁸ The effect of this agreement is that to date the southern part of Nigeria, which embraced Christianity, has benefited extensively from Western education while Islamised Northern Nigeria still lagged behind in terms of education and development. This paternalistic agreement forced Islamic leaders to create what they called 'sabongari'⁶⁹ meaning 'strangers quarters' in order to checkmate the migration and infiltration of alien cultures and politics. It should be argued that the creation of exclusive zones for migrants hindered acculturation and inter-group relations.⁷⁰ To explicitly put it, I refer to the work of Akinyele (2003)'s, *Race Ethnicity and Nation Building in Africa: Studies in Inter-Group Relations*,⁷¹ which is already explored in chapter one.

The explanation for the creation of exclusive zones has always been attributed to Islamic teaching, but the truth of the matter is that it was the beginning of social division in both the public and private domain. The effect on the people was a feeling of religious superiority and domination. Indeed, it was this state of affairs that motivated the Moslem elite to accept and adopt the classical, indirect rule system and other political architecture of empire building. What the country needed at that moment lies in the thinking of Obasi (2005): "It could be proposed that Nigeria is in dire need of a progressive change. Such a

⁶⁶ COLEMAN, S. C. 1986. *Nigeria: Background To Nationalism*, Ilupeju Press: Benin City, 271-274.

⁶⁷ COLEMAN, S. C., 1986, Op.Cit.91-94.

⁶⁸ WILLIS, J.R., 1967. *Jihād Fī Sabīl Allāh—Its Doctrinal Basis in Islam and Some Aspects of Its Evolution in Nineteenth-Century West Africa. the Journal of African History*, 8(3), 395-415.

⁶⁹ COLEMAN, J.S. 1958. *Nigeria: Background To Nationalism*. University of California Press: Berkeley, 140.

⁷⁰ MBAO, M.L. AND OSINIBI, O.M., 2014. *Confronting the Problems of Colonialism, Ethnicity and the Nigerian Legal System: the Need For A Paradigm Shift. Mediterranean Journal of Social Sciences*, 5(27 -1), 168.

⁷¹ Ibid.

change should be radically different from our catalogue of cosmetic changes experienced since independence”.⁷²

2.4 Development of political transition in colonial Nigeria

This section explores the different approach employed by British colonialists to forge a political process for the Nigerian people following the limitations and effects of the indirect rule system, and changes in global affairs. Throughout the early twentieth century, Nigerians fought hard to confront colonial rule and human rights violation through cultural nationalism,⁷³ strikes and media campaigns. These efforts were aimed at democratic principles and all-inclusive government. In this section constitutional developments in colonial Nigeria and its effects on the people in particular and the nation in general will be examined.

Since the amalgamation of the country was not total and had continued to distort political transition and socioeconomic culture, the need for political participation became even more expedient for the political class⁷⁴, a notion elucidated by the chapter on the “Nigeria-Army in Government”⁷⁵ that was earlier on broadly discussed. This is primarily because the amalgamation of different nationalities into one country called Nigeria was not a democratic process, but a colonial enterprise executed through conquest and pacification. Immediately after the amalgamation, the colonial powers adopted an undemocratic system of governance called indirect rule where it imposed its stooges and warrant chiefs as rulers over the colonies.⁷⁶ Colonial powers also entrenched ethnicity and tribalism through its regionalisation policy⁷⁷ that failed to establish a pan Nigerian agenda

⁷² OBASI, I.N. 2005. “*the Domestic Dimensions of the Nigerian Economy, 1960-1985*”. in OGWU, U.J., & OLANIYAN, R.O. eds., 2nd. *Nigeria’s International Economic Relations: Dimensions of Dependence and Change*. Lagos: A Publication of Nigerian Institute of International Affairs, 3-27.

⁷³ OLUKOJU, O. 1997. “*the Dynamics of Cultural Nationalism in Colonial Nigeria*”. in Osuntokun, A., & Olujoju, A. eds. *Nigerian Peoples and Cultures*, 298-309.

⁷⁴ OLUSANYA, G.O. 2012 (REPRINT). “*Constitutional Development in Nigeria, 1861-1960*”. in IKIME, O. *Groundwork of Nigerian History*. Heinemann Publishers Ltd: Ibadan., 518-544.

⁷⁵ Op.Cit.223-232.

⁷⁶ NICOLSON, I.F., 1969. *the Administration of Nigeria, 1900-1960: Men, Methods and Myths (180-215)*. Clarendon Press: Oxford.

⁷⁷ NNOLI, O. 1978. *Ethnic Politics in Nigeria*, Op.Cit. 194.

for the nation.⁷⁸ This policy unfortunately laid the foundation for corruption and tribal sentiments, thereby corroborating the respective arguments of Nnoli⁷⁹ and Coleman⁸⁰, which are so significant in the literature covered in the preceding discussion.

The effect of these developments is still being felt in Nigerian polity as no meaningful progress has been recorded. Instead, it has left the country to contend with ethnic politics, military rule and human rights violations. Nnoli (1978), extending this idea, notes that 'Northernisation' must be condemned as inimical to national unity because of its tendency to engender ethnocentricity in the North. The East and the West could afford to demand 'Nigerianisation'.⁸¹

In view of the above, this discussion focuses on how colonial politics and constitutional engineering developed up to independence and the effect it had on the progress of post-colonial Nigeria. The agitation for Nigeria's independence was supported by pressure groups from other nations, including liberal thinkers and reformers in Britain.⁸² John de St. Jorre in 1972 provides a detailed analysis of the Nigerian Civil War, which began after British colonial rule. The author offers background to the military regime in Nigeria, which he elaborates on, citing its human rights violations and widespread brutalities.

It should be recalled that by 1946 the British had responded by introducing a new constitution that divided Nigeria into three regions: Northern, Eastern and Western.⁸³ These regions had their own legislative assembly, mainly appointed rather than elected members, and were overseen by a weak federal government. Although short-lived, the constitution had a serious long-term impact through the encouragement of regional and ethnic-based politics.⁸⁴ With the creation of the

⁷⁸ TAMUNO, T.N. 2012. "British Colonial Administration in Nigeria in the 20th Century". in Ikime, O. *Groundwork of Nigerian History*, Op.Cit. 393-409.

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ NNOLI, O. 1978. *Ethnic Politics in Nigeria*, Op.Cit. 195.

⁸² Such Pressure Also Came From the US and the USSR. See POST, K.W., 1964. *Nationalism and Politics in Nigeria: A Marxist Approach*. the *Nigerian Journal of Economic and Social Studies*, 6(2), 167-176.

⁸³ This Was the Richards Constitution Which Replaced the Clifford Constitution of 1921. See OLUSANYA, G. O. 1984. "Constitutional Development, 1861-1960," in *Groundwork of Nigerian History*, Op.Cit. 518-544.

⁸⁴ BOURDILLON, B., 1946. *Nigeria's New Constitution*. *United Empire*, 37(2).

regions in the constitution, ethnic and regional politics was promoted and encouraged, thereby corroborating the views of Hugh Clifford, the colonial Governor of the country in the 1920s, who made it abundantly clear that his administration would seek to secure for “each separate people the right to maintain its identity, its individuality and its nationality, its chosen form of government; and the peculiar political and social institutions which have been evolved for it by the wisdom and the accumulated experiences of generations of its forebears”.⁸⁵

The political and constitutional engineering of Governor Hugh Clifford created regions and regional politics, as well as the forces of hegemony and social division. It made each region conscious of its resource control and created positions of authority. This is why eminent scholars believe that regional politics bred sectionalism and nepotism, which promoted the British divide and rule policy. It also brought about stagnation, corruption and underdevelopment, since every region wanted to have more of the resources than others. Indeed the 1921, 1946 and 1951 constitutions did not consider the development and unity of the Nigerian State; rather it brought the nation to a standstill as politicians struggled for domination and resource control that eventually brought about military rule and human rights violations which the Oputa Commission was created to address.

Available evidence shows that it was the spirit of ethnic nationalism that contributed to the July 1966 coup and many years of military rule and attendant human rights violation that characterised autocratic rule. Unfortunately, there was the replacement of rule of law with rule of might, and Nigeria degenerated into a pariah state.⁸⁶ This dichotomy remained potent even after the democratic rule of 1999, as the Igbo and Niger Delta groups where the oil economy of the nation was produced, continued to suffer marginalisation in the affairs of the nation.⁸⁷ Thus in the previous chapter though, Adeyemo described Nigeria’s

⁸⁵ NNOLI, O. 1978. *Ethnic Politics in Nigeria*, Op.Cit. 112-113. Also See COLEMAN, J.S. 1986. *Nigeria: Background To Nationalism*. Ilupeju Press Ltd: Benin City., 194.

⁸⁶ FAWOLE, W.A., 2003. *Nigeria's External Relations and Foreign Policy Under Military Rule, 1966-1999*. Obafemi Awolowo University Press: Ile Ife.

⁸⁷ OMOJOLA, B., 2007. *the Niger Delta: Rich, But Very Poor*. *Africa Today (London)*, 13(10), 20-39. See Also MEREDITH, M. 2011. *the State of Africa, A history of the continent since independence*. Simon And Schuster: New York, 576-578.

attempts at confronting the past as inadequate, ineffective and a farce. He went ahead to posit that the outbreaks of violence in the Northern part of the country and the resurgence of violence in the Niger-Delta region of the country were because of the absence of prosecutions of perpetrators of human rights violations.

According to Obi (2002), oil provides the ample resources used in political transition, and is the reward of political power. Thus, the oil factor is a critical aspect of the politics of transition in Nigeria. It is inextricably linked to the fragile and mono-cultural (oil) economic base, and the desperate struggles among factions of the Nigerian ruling class for power.⁸⁸

This chapter argues that it was the constitution of regionalism that drove Nigerian peoples into ethnic politics, hegemony and resource control.⁸⁹ This development became profound post-independence leading to the military incursion. The negative role of ethnicity, tribalism and religion brought unhealthy rivalry for the control of central government by ethnic loyalists. Some unpatriotic politicians who intended to cripple the nation because of what they stood to gain also aggravated colonial problems to the extent that there was no pan Nigerian project or vision. Unfortunately, the nation teetered until independence as the seeds of ethnic discord were already planted. Post-colonial Nigeria was also nurtured along this trajectory, and the consequences were lack of patriotic spirit and vision.⁹⁰

Nigeria has struggled with misplaced priorities, for example, it was expected that the regions with mineral deposits should be given attention in terms of development and provision of social amenities, but the reverse was the case in Nigeria, as the people of those regions remained marginalised and on the periphery of development. How therefore would the country move forward? It is for this reason that the Niger Delta militants took over the creeks and engaged in

⁸⁸ OBI, C. 2002, *"Oil and the Politics of Transition in Nigeria"*. ONUOHA, B. AND FADAKINTE, M.M., 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press. SeedIAMOND, L.J., KIRK-GREENE, A.H.M. AND OYEDIRAN, O. eds., 1997. *Transition Without End: Nigerian Politics and Civil Society Under Babangida*. Boulder, Co: Lynne Rienner: Colorado.

⁸⁹ "AKINYELE, R.T., 1997. *the Growth of Nationalism and the Political Evolution of Nigeria*. *Nigerian Peoples and Cultures*, 275". in OSUNTOKUN, A., & OLUKOJU, A. eds. *Nigerian Peoples and Cultures*. Davidson Press Ltd: Ibadan., 273-295.

⁹⁰ OLUKOJA, A. 1997. *"the Dynamics of Cultural Nationalism in Colonial Nigeria"*. in OSUNTOKUN, A., & OLUKOJU, A. eds. *Nigerian Peoples*, Op.Cit. 296-307.

the kidnapping of oil workers to press home their demands.⁹¹ It also prompted the National Conference of 2014 to suggest how the six geo-political groups in Nigeria could be balanced in the power equation. The suggestion was to create one more state in Eastern Nigeria dominated by the Igbo. These were some of the teething problems in the current agitation for the establishment of Biafra⁹² that were informatively discussed by Madiebo (1980), in *The Nigerian Revolution and the Biafran War*,⁹³ coupled with Uwechue's detailed study that dwells on the situation before and after the civil war, which did not differ much from that of Miners and Eliagwu. As discussed earlier, it focuses on one man's account and participant observation of the war, and this raises much argument on Uwechue's involvement (on the side of Federal troops at the beginning) and his change of position as an ambassador to the Biafran government, which is highly informative as earlier discussed in the preceding chapter.

It should be recalled that in 2009, Chinua Achebe noted in a colloquium that the tragedy, so far, is that the nation's powerful elite, across all ethnic groups, has repeatedly deferred action in response to national dialogue, instead preferring to appease aggrieved tendencies through state and local government creation, co-opting agitators, and dispensation of patronage to stifle dissent, where pacification will not work. However, as the years rolled by, it was increasingly becoming clear that Nigeria could not avoid a genuine dialogue for much longer.⁹⁴

These were some of the problems created by the colonial state that eventually led to political transition, military rule and human rights violations. What was the nature of historical legacy of ethnic and prebendal politics in Nigeria? And to what extent did it affect political transition in the era of decolonisation? These and other issues will be discussed in the next section.

⁹¹ *It Was the Quest For Equity and Justice That Ken-Saro Wiwa and His Kinsmen Were Extra-Judicially Killed in 1995.*

⁹² *the demand of the Igbo For A Biafra Republic Has Resonated Since 1999 When Democracy Returned To Nigeria. Today, That Agenda Is Being Championed By Mr Uwazurike and Mr Kanu, and Scores of Igbo Indigenes Have Paid the Supreme Price in the Struggle, Just Like That of the Niger Delta.*

⁹³ Ibid.

⁹⁴ *Politics Special, "Wanted: Action On High Points of Achebe Colloquium Resolution" (2009, December 22), Vanguard Newspaper, 46.*

2.5 Historical legacy of political transition, ethnic⁹⁵ and prebendal politics⁹⁶

This section analyses the legacy of ethnic and prebendal politics in Nigeria pre and post-independence. This is important in the production of knowledge. It will enable us to put into perspective where Nigeria missed the trajectory of political development as a nation, and how those early miscalculations negatively affected the country.⁹⁷ The chapter further provides insight into the spiralling effects of ethnicity and cultural nationalism⁹⁸ that contributed to the crisis of military intervention in politics in 1966 and human rights violations.

Kirk-Greene in 1964 in "A Preliminary Note on New Sources for Nigerian Military History⁹⁹ " is positively correlated with Ojiako's later submission in 1980 that religion, ethnicity and undemocratic behaviour by political elites were key factors that led to military intervention in Nigeria.¹⁰⁰ The military faction that intervened in the coup of July 1966 was predominantly made up of Northerners, who were keen to pursue the agenda of the Hausa/Fulani oligarchy, and promote northern hegemonic interests over other ethnic groups. In the course of this discussion, the term 'hegemony' will be defined. It is therefore not surprising that all military rulers that emerged in successive military coups were northerners, controlled by the Hausa/Fulani oligarchy. This was not coincidental because it was driven by the actualisation of a pan Northern Nigeria agenda to entrench its hegemony over other ethnic and religious groups.¹⁰¹ Most importantly though is what Shriver (1995) talks about forgiveness, always associated with religious sentiment," in which he continues to affirm that in the modern context, forgiveness may need to "escape its religious captivity and enter the ranks of

⁹⁵ NNOLI, O., 1978. *Ethnic Politics in Nigeria, Forth Dimension: Enugu*, JIBO, M., GALADIMA, H. S. & SIMBINE, A.T., 2001. *Ethnic Groups And Conflicts in Nigeria: the Northcentral Zone of Nigeria. the Lord's Creation*, 4.

⁹⁶ JOSEPH, R.A. 1999. *Democracy and Prebendal Politics in Nigeria*, Op.Cit.

⁹⁷ HAGHER, I. 2011. *Nigeria: After the Nightmare*. University Press of America: Lanham.

⁹⁸ ISICHEI, E. 1975. *History of West Africa Since 1800*. Macmillan Press Ltd: London., 307.

⁹⁹ Ibid.

¹⁰⁰ Details in OJIAKO, J.O. 1980. *Thirteen Years of Military Rule, 1966-79*. Lagos: Daily Times Publications Ltd., 1-3. Also See UWECHUE, R. 2004. *Reflections On the Nigerian Civil War: Facing the Futures*, Heritage Press Ltd.

¹⁰¹ OLUKOJU, A. 1997. "the dynamics of Cultural Nationalism in Colonial Nigeria". in OSUNTOKUN, A., & OLUKOJU, A, eds. *Nigerian Peoples and Cultures*, 296-307.

ordinary political virtues” and thereby deal with hegemony.¹⁰² To maintain their grip on power the military regime committed gross human rights violation hitherto unknown in the history of Nigeria.¹⁰³ This violation of human rights by the military brought about the Oputa Commission, as most developed nations of the world, including the Commonwealth of Nations and France, had isolated Nigeria in the comity of nations, coupled with the economic embargo, which had a telling effect on the country.

This study reveals that the British strategy of divide and rule, particularly the shielding of Northern Nigeria from Western influence¹⁰⁴ and civilisation, did not help the development of the country. The legacy of this was exposed in 1956 when Anthony Enahoro moved a motion for self-determination; invariably the northern oligarchy claimed they were not ready, due to the fear of domination by Southern Nigeria and lack of manpower.¹⁰⁵ The fallout from this situation was revealed in post-colonial Nigeria where ethnic politics and contestation of power led to the fall of the first republic and the intervention of the military into politics.

Among its resultant negative consequences as observed by Babangida in (2002) is, wastage of enormous human and material resources in ethnically inspired violence, encounters, clashes and even battles, heightening of fragility of the economy and political process, threat to security of life and property and disinvestments of local and foreign components with continuous capital flight and loss of confidence in the economy; and increasing gaps in social relations among ethnic nationalities including structural suspicions and hate for one another.¹⁰⁶

¹⁰² Ibid.

¹⁰³ Details in OJIAKO, J.O. 1980. *Thirteen Years of Military Rule, 1966-1979*. Daily Times Publication Ltd: Lagos, Also See UWECHUE, R. 2004, *Op.Cit*.

¹⁰⁴ COLEMAN, J.S. 1986. *Nigeria: Background To Nationalism*. Ilupeju Press Ltd: Benin City., 137-140.

¹⁰⁵ See COLEMAN, J.S. 1986, *Op.Cit*.398-402. Also See NNOLI, O., 1978. *Ethnic Politics in Nigeria (Enugu: Forth Dimension)*. JIBO, M., GALADIMA, H. S. & SIMBINE, A.T., 2001. Ethnic Groups And Conflicts in Nigeria: the Northcentral Zone of Nigeria. the Lord's Creation, 4.

¹⁰⁶ SALAWU, B. AND HASSAN, A.O., 2011. *Ethnic Politics and Its Implications For the Survival of Democracy in Nigeria*. *Journal of Public Administration and Policy Research*, 3(2), 28-33.

This also establishes that election manipulation and human rights violations, which began in the colonial state continued in contemporary times because of ethnic politics, impunity and hegemony. Therefore, election rigging and manipulation had become an acceptable conduct in power contestation.¹⁰⁷ The voice of the people and their prerogative to elect their leaders in a free and fair election has frequently been disregarded. Richard (2014) also notes that leaders no longer owed allegiance to the people, as they knew they could always manipulate the electoral process. The effect of this impunity was electoral apathy and lack of faith in the Nigerian elections¹⁰⁸. The attendant corruption associated with voting and civilian government intermittently led to the overthrow of the so-called democratically elected government in Nigeria, as experienced in 1966 and 1983,¹⁰⁹ An issue broadly covered in chapter one in Ogundiya (2010), “Democracy and Good Governance: Nigeria’s Dilemma”,¹¹⁰ and Bello and Odusote (2013), “The Matrixes of Bad Governance, Corruption and Insecurity in Nigeria”.¹¹¹ The coming to power of successive military regimes and their transition politics pitched civil society against them, because of human rights violations unleashed by the military during agitation for democratic rule.¹¹²

To deepen our discussion, it is important to understand the meaning of ethnicity, as indicated earlier, in view of the negative role it played in the democratic struggle of modern Nigeria. According to Parkin (1978) “Ethnicity is basically a cultural system denoting group boundary”.¹¹³ Cohen (1974) also notes that ethnicity is “fundamentally a political phenomenon. It is the intensive struggle between groups over new strategic positions within the structure of the new

¹⁰⁷ JOSEPH, R.A. 1999. *Democracy and Prebendal Politics in Nigeria*, Op.Cit.170-171.

¹⁰⁸ Ibid.172-175.

¹⁰⁹ MEREDITH, M. 2011. *the States of Africa: A History of the Continent Since Independence*, 220-22.

¹¹⁰ Ibid.

¹¹¹ Ibid.

¹¹² NWANKWO, A.A. 1987. *the Military Option To Democracy: Class, Power and Violence in Nigerian Politics*, 8-9. Also See MOMOH, A. 2012. “Akinyemi and the Politics of Nadeco” (*National Democratic Coalition*). in Imobighe, W.O. *Perspectives On Nigeria’s National Politics and External Relations*, 36-52.

¹¹³ Cited in JOSEPH, R.A. 1999. *Democracy and Prebendal Politics*, Op.Cit. Spectrum Books Ltd: Ibadan, 6.

state”.¹¹⁴ These definitions clearly illustrate the situation in Nigeria since colonial domination. The accumulation of wealth and state resources led to transition politics and the Oputa Commission. Most importantly is the fact that such investigative bodies have been employed in at least 20 countries and are being considered for such nations as Bosnia and Kenya.¹¹⁵

In retrospect, it is posited that Nigeria got into this predicament following the 1946 Constitution that introduced ethnic politics, and this continued in successive years. The constitution later failed because of the gaps it created and by 1949 it was automatically abrogated. The Macpherson Constitution consolidated the policy of ethnic politics and regionalism. This constitution emerged from the proceedings of the General Conference of January 9, 1950. It came into effect in 1951 and recommended to the Secretary for the colonies that there should be three regions – Northern, Eastern and Western regions with the independent municipality of Lagos.¹¹⁶

This was followed by the Lytelton Constitution of 1954, and both constitutions had to contend with powerful ethnic forces.¹¹⁷ By the early 1950s, other parties had emerged, notably the Northern People’s Congress (NPC), a conservative group led by the Hausa-Fulani elite. The ethnic power bloc of these parties foreshadowed divisive regional politics that would later lead to independence.¹¹⁸ The later was thus elucidated on as posited in chapter one by Tamuno, T.A. (2012), In Ikime, O. ed. (2012). *Groundwork on Nigerian history*¹¹⁹ the result of ethnic based political parties as seen in their manifestos pursued a narrow ethnic agenda instead of a pan Nigerian philosophy. It was the pursuit of narrow ethnic interests by regional powers that in the long run affected the development of Nigeria as a cohesive and powerful nation.

¹¹⁴ Ibid.

¹¹⁵ KROKER, D. A. (1998). *Truth Commissions, Transitional Justice and Civil Society*. Belgrade Philosophical Annual, (11), 225-247

¹¹⁶ LAKEMFA, O. (2009, NOVEMBER 17). “the Flaw in British Handover”, *Vanguard Newspaper*, 43.

¹¹⁷ *These Were the Macpherson and Lytleton Constitutions Respectively*. See OLUSANYA, G. O. 1984. “Constitutional Development, 1861-1960”. in *Groundwork of Nigerian History*, Op.Cit. 518-544.

¹¹⁸ NNOLI, O., 1978. *Ethnic Politics in Nigeria, Enugu: Forth Dimension*. JIBO, M., GALADIMA, H. S. & SIMBINE, A.T., 2001. *Ethnic Groups and Conflicts in Nigeria*, 4.

¹¹⁹ Ibid.

Since the intervening years (1966–1999), ethnic and prebendal politics have been accepted in Nigerian politics.¹²⁰ The fact that the three major ethnic groups had different agendas made it impossible for leaders to work together to uplift the interests of Nigeria as a nation. Divisive ethnic politics weakened the fabric of the nation, as energy was mainly dissipated in the struggle for control of the central government and its resources while little effort was put into stabilising national unity. It should be recalled that after Nigeria's failed experiments with parliamentary and presidential forms of government, the Samuel Cookery Political Bureau was set up to fashion a new political order for the country, travelled far, but failed to find new waters to test the nation's turbulent politics.¹²¹

Additionally, it is argued in some quarters that ethnicity played a major role in the reluctance of the military administration of Babangida to cede power after June 12, 1993 elections, in which a Yoruba, M.K.O. Abiola, was poised to win.¹²² The negative role ethnicity played in the quest for the validation of the election could be seen in the manner that both Hausa/Fulani and Igbo political elites were reluctant to support the validation of Abiola's mandate. This scenario created opposition to actualise the mandate and keep Nigeria on the path of progress. An Igbo, Chief Arthur Nzeribe and his allies masterminded the infamous Association for Better Nigeria (ABN);¹²³ even Chief Abiola's visit to Igbo land to seek for support for his mandate was not successful, as the Igbos remained non-challant. The failure of this outing exacerbated the reaction against Babangida's regime, which eventually led to violent reprisals and human rights violation, and the decision to establish the Oputa Commission as a transitional justice mechanism.

Since the colonial period the Caliphate had used religion and hegemony to capture the minds of northerners to do their bidding.¹²⁴ The implication of this strategy lies in the fact that other ethnic groups have also sought to assert their

¹²⁰ JOSEPH, R.A. 1999. *Democracy and Prebendal Politics*, Op.Cit. 5-8.

¹²¹ EKPU, R. (1987, April 13). *Special Report*, "Esau's Hand, Jacob's Voice". *News Watch Magazine*, 15-16.

¹²² ONUOHA, B. AND FADAKINTE, M.M., 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press, 8-9. Also See MOMOH, A. 2012. "Akinyemi and the Politics of NADECO", Op.Cit. 36-52.

¹²³ ABBAH, S. (July 10, 1995). "Maverick Masquerades". *News Magazine*, 9-10.

¹²⁴ COLEMAN, J.S., 1986. *Nigeria: Background To Nationalism*, 327-331.

own ethnic agendas and supremacy, thereby rendering any pan Nigerian agenda impossible. Instead of the country moving forward during military rule, it succumbed to transition politics, corruption and human rights violation.¹²⁵ Consequently, Nigeria was blacklisted among the worst, corrupt nations in the world, an image the country wrestled with after the democratic civilian government of 1999 headed by President Olusegun Obasanjo.

The basic argument was that British withdrawal after independence would leave Northerners at the mercy of Southerners, they therefore conspired to delay the independence until 1960, to effectively consolidate the philosophy of hegemony and by extension perfect the thinking of ethnic politics that would not only guide them as a geographical entity, but also as a people. The diversity of Nigeria, rather than being its strength, appears to have become a source of weakness to the extent that some Nigerians lost faith in the vision of their forefathers.

This is because of lopsided politics, the domination by Hausa/Fulani oligarchy and the elections of impunity. At the dawn of Nigeria's independence, it was visible that the British had bequeathed weak structures that became a source of ethno-religious conflicts from 1960 to 1966, which impacted negatively on the human rights profile of the country. Among these conflicts were the Census crisis of 1962/63,¹²⁶ Action Group crisis of 1962, Federal election crisis of 1964 and Western Region election crisis of 1965.¹²⁷ These events precipitated problems in Yoruba land as the election results and population census were rejected because of allegations of manipulation.

Consequently, there was violent reaction and burning of houses belonging to opponents, leading to human rights violations as innocent citizens were

¹²⁵ MOMOH, A., 2012. "Akinyemi and the Politics of NADECO" (*National Democratic Coalition*). in Imobighe, W.O., *Perspectives On Nigeria's National Politics and External Relations*, 36-52.

¹²⁶ FALOLA, T., 1991. *History of Nigeria: Nigeria in the Twentieth Century*. Longman Nigeria: Lagos, 106.

¹²⁷ DUDLEY, B.J., 1970. *Western Nigeria and the Nigerian Crisis. Nigerian Politics and Military Rule: Prelude To the Civil War*, Athlone Press: London, 106-08.

molested or killed during the violence.¹²⁸ This eventually culminated in the military coup of January 1966 and the counter-coup of July 1966. Falola et al. (1991) note:

By 1965, most Nigerians had become disillusioned and disaffected towards the various governments of the federation. The mounting political, economic and social problems facing the country were not addressed by the politicians rather nepotism, corruption, indiscipline, tribalism, sectionalism and a host of other vices became rife. Institutions, which could have helped in solving the problems, for example, the courts, the Census Commission, the Federal Electoral Commission, the police and finally the armed forces, were being politicised.¹²⁹

Overall, Nigeria became a troubled nation as the virtues of sustainable human rights and democratic structures continued to elude the country even after 1966 when the military claimed that it had the answers to national problems. Unfortunately, the military rested on human rights violation, corruption and impunity, as well as ongoing transition politics.

From a broad perspective, Nigeria's political history has been a litany of brinkmanship, incoherence, and uncertainty.¹³⁰ This is attributed to ethnic and religious diversity, which even civilian political leaders manipulated for selfish ends before 1966. Indeed, ethnic and religious conflicts remained a major problem while the scramble for control of the central government topped the priorities amongst contending political forces and their backers.¹³¹ Yet it did not end with the fall of the first

¹²⁸ OJIAKO, J.O. 1980. *Thirteen Years of Military Rule, 1966-79*, Op.Cit.

¹²⁹ FALOLA, T, MAHADI, A., UHOMOIBHI, M., & ANYANWU, U., 1991. *History of Nigeria, Vol.3, Nigeria in the 20th Century*. Longman Nigeria: Lagos, 140; Also See UWECHUE, R., 1971. *Reflections On the Nigerian Civil War: Facing the Future*. Africana Publishing Corporation: New York, 5-6.

¹³⁰ AGBAJE, A. et al. 2004. "Introduction" in *Between the Past and the Future in Nigeria's Struggle For Democracy & Good Governance, A Festschrift for Oyeleye Oyediran*. Ibadan University Press: Ibadan.

¹³¹ DUDLEY, B. J. (1973) *Instability and Political Order: Politics and Crisis in Nigeria*, Ibadan

Republic. Instead they have become recurrent issues in Nigeria coupled with the agitation in the oil rich Niger Delta region of the country.¹³²

Nevertheless, the elections of 1979, which ushered the second Republic from 1979 to 1983, did not depart from ethnic and prebendal politics.¹³³ It was characterised by corruption and nepotism, which showed that Nigerian politicians did not learn enough lessons from the events of the 1960s and the emergence of military rule. Incidentally, General Buhari in his main broadcast after the December 1983 coup remarked that “it was in the discharge of national role as promoters and protectors of the nation’s interest that the armed forces decided to effect a change in the leadership of the government...to clean up the mess and save the country once again and pilot its affairs from the path of insanity”.¹³⁴

Nigerians who felt betrayed by the politicians and their corrupt tendencies at first welcomed the coup. This support, however, was short-lived as human rights violation orchestrated by the administration, including the gagging of the press became increasingly apparent, which explained that military rule was not the answer to the myriad of challenges facing the country. The problem of ethnic politics and prebendalism also had a spiral effect on electoral fraud and human rights violation.

2.5.1 Political transition, electoral fraud and human rights violation: a colonial factor.

The Nigerian transition crisis revealed the increasingly predatory and self-interested character of military rule, a proclivity that had intensified social discord and internal military disaffection. Moreover, an anaemic democratic movement, weakened political institutions and a fragmented civil society that provided tenuous foundations for the revival of democratic pressures or the

University Press: Ibadan.

¹³² OMOJOLA, B., 2007. *the Niger Delta: Rich, But Very Poor. Africa Today (London)*, 13(10), 20-39.

¹³³ JOSEPH, R.A., 1999. *Democracy and Prebendal Politics in Nigeria: the Rise and Fall of the Second Republic*. Spectrum Books Ltd: Ibadan, 1-10.

¹³⁴ FALOLA, T, MAHADI, A., UHOMOIBHI, M., & ANYANWU, U., 1991. *History of Nigeria, Vol.3, Nigeria in the 20th Century*. Longman Nigeria: Lagos, 180-181.

implementation of a workable political transition¹³⁵. An absurdity however rested in, the problems of hegemony and impunity therein that was manifest in the colonial state because they did not stop at national level; but was so evident in the internal and local elections in the Northern region. The emirs and the oligarchy exploited this chance to meddle into the politics of the country.

This chapter therefore establishes the fact that hegemony and impunity had become a cankerworm in Nigerian polity and would remain so until the Northern oligarchy avoided interfering in politics.¹³⁶

It is a well-known fact in the colonial state that the election results of 1951¹³⁷ were manipulated in personal homes and offices with the connivance of accredited electoral agents. This scenario also manifested in modern elections where fictitious names and fake electoral materials were freely used to gain more or popular votes.¹³⁸ The effect of this was electoral apathy on the part of voters and impunity on the part of politicians who were eager to take power at all costs.¹³⁹

This did not help the country in its quest for unity and progress. For instance, the elections of 1951¹⁴⁰ and 1959 did not take place without elements of malpractice. Sir Bryan Smith, a colonial administrator, confessed that in the elections of 1951, he not only helped to prepare NPC's manifestos, slogan and strategies, but he affirmed: "I had to hold and guide the pen hand, after cajoling

¹³⁵ LEWIS, P.M., 1994. *Endgame in Nigeria? the Politics of A Failed Democratic Transition*. *African Affairs*, 93(372), 323-340.

¹³⁶ NNOLI, O., 1978. *Ethnic Politics in Nigeria, Forth Dimension: Enugu*, JIBO, M., GALADIMA, H. S. & SIMBINE, A.T., 2001. *Ethnic Groups and Conflicts in Nigeria*, 4; Also See UBAH, C.C. 1976. "the Indirect Elections At Kano, 1951" (Unpublished Mimeo), *Nsukka, Nigeria*, 13-14. Also See Sklar, R. 1963. *Nigerian Political Parties*. Princeton, Princeton University Press: Princeton, 450-452.

¹³⁷ NNOLI, O., 1978. *Ethnic Politics in Nigeria (Enugu: Forth Dimension)*. JIBO, M., GALADIMA, H. S. & SIMBINE, A.T., 2001. *Ethnic Groups and Conflicts in Nigeria*, 4; Also See Sklar, R., 1963. *Nigerian Political Parties*. Princeton: N.J; Princeton University Press, 30; Lawal, A.A. *Corruption in Nigeria: A Colonial Legacy*; Akinyele, R. T., 2013. "Lines and Space in Human Affairs: Minorities and Marginals".

¹³⁸ BRATTON, M., 2008. *Vote Buying and Violence in Nigerian Election Campaigns*. *Electoral Studies*, 27(4), 621-632.

¹³⁹ FAGUNWA, T.C. 2015. *Voter Apathy and Nigeria's Electioneering Process: A Synopsis On the 2015 General Elections*.

¹⁴⁰ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon & Schuster: London, 76-77.

from them the names of those for whom they wished to vote”.¹⁴¹ This shows a regrettable incident because those who were meant to set an example of the political process as administrators of empires and colonies suddenly became destroyers of an evolving process. Smith also confessed to election manipulation, even where the supporters were in a minority, so the party could win ninety per cent of the vote.¹⁴² In the run-up to elections conducted under the Electoral Commission of Nigeria in 1959 there were allegations of rigging, stuffing of ballot boxes, as well as obstruction and intimidation of opponents.¹⁴³ Corruption eroded the first and second democratic governments and led to the inception of the military into governance which bred the latter’s human rights violations in a bid to quell democratic dissent. Such factors eventually led to the establishment of the Oputa Commission. In the realm of human rights, the profile of the British was less than impressive. British rulers exiled some African rulers to achieve their objectives.¹⁴⁴ Others were dethroned and deprived of their economy as the colonialists were determined to monopolise them for the benefit of the metropole.¹⁴⁵ It should be recalled that most British industries in this period depended on raw materials to sustain production, and these materials as well as markets for finished goods were dependent on the colonies.

Cases of rape and kidnapping of women by colonial agents and soldiers of the West African Frontier Force, who engaged in the plundering of villages were

¹⁴¹ SMITH, S.B.S., 1969. *“But Always As Friends”: Northern Nigeria and the Cameroons, 1921-1957*. G. Allen & Unwin: Crows Nest, 224-225.

¹⁴² ENAHORO, A., 1985. *Independence, democracy and Modern Nationhood: the dominant Factor in Nigerian Politics*. *Journal of the Nigerian Political Science Association*, (4), 180-201.

¹⁴³ OFONAGORO, W. 1989. *the Story of the Nigerian Elections*. Lagos: Federal Ministry of Information. Also, See, KURFI, A. 1983. *the Nigerian General Elections, 1958 and 1979*. Lagos: Macmillan, 222-223; Shade Ifemose, *the Behaviour and Attitude of the Political Class in Nigeria With Particular Reference To Democratic Ethos, Culture and Practices*, *Journal of the Historical Society of Nigeria*, Vol. 18, Special Edition (2009), 61-78. Published By Historical Society of Nigeria. Url: <http://www.jstor.org/stable/41854928> (Accessed, 08-05-2017), 63-64. See Additional Information in OGUNDIYA, I.S., 2010. *Democracy and Good Governance: Nigeria’s Dilemma*. *African Journal of Political Science and International Relations*, 4(6), 201-208.; <http://www.academicjournal.org/Ajpsir> (Accessed 10/5/2017).

¹⁴⁴ CROWDER, M., 1966. *the Story of Nigeria*. Faber and Faber: London. 210-215. Also See ISICHEI, E., 1975. *History of West Africa Since 1800*. Macmillan Press Ltd: London., 89-99.

¹⁴⁵ NWACHUKWU, S.N., AGHAMELO, A. AND STANLEY, N., 2014. *An Account of Human Right Violations in Nigeria (Pre-British, British and Post-Independence)*. *European Scientific Journal*, 10(10).

brought before the courts.¹⁴⁶ The observation of prominent individuals attest to the fact that these horrors were better imagined than experienced. It was evident that colonial agents committed human rights violations that were unprecedented in the history of the nation. Therefore, the theory of colonial isolationism by the colonised was tantamount to outright rejection and repudiation of their objectives.

This development was conspicuous in post-colonial Nigeria, because the military brought with them endless political transition¹⁴⁷ that never saw the light of day.

It was the flagrant behaviour of colonial agents that frequently sent people into the bush for days and months, knowing full well that their human rights would be violated. This is epitomised in the senseless killing of Aba women in 1929¹⁴⁸ for protesting the draconian policies of the colonial administration like the imposition of special tax on market women. This was an abuse of the right to work, freedom from discrimination based on gender and sex to mention but a few. The inquiry later condemned the actions of the British and to ease the tension and agitation of the people, a change of policy was effected in Eastern Nigeria.¹⁴⁹

The culture of brutality and oppression in the colonial state was apparent when the military took power in 1966. To remove the legal protection of human rights violation available to Nigerians, the constitution of the federal republic was suspended to deny people access to freedom and justice.

According to Ojiako (1980): "The national military government took the following actions as soon as they overthrew the civilian government in 1966. First, was the suspension of the provisions of the constitution of the federation relating

¹⁴⁶ *Lagos Standard*, March 6, 1895, 2. Also See AFIGBO, A.E., 1974. *Indirect Rule in South-Eastern Nigeria: the Era of Warrant Chiefs, 1891-1929. Tarikh*, 4(4),11-24.in *European Conquest and African Resistance (Part 2), Tarikh*, Vol.4, No.4, 11-24.

¹⁴⁷ ANIFOWOSE, R. 2002. "Transition and the Military Question in Nigeria". IN ONUOHA, B. AND FADAKINTE, M.M., 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press: Lagos. 81-96.

¹⁴⁸ AFIGBO, A.E. 2012. "the Eastern Provinces Under Colonial Rule". in Ikimi Obaro, ed. *Groundwork of Nigerian History*, 410-428. Heinemann Educational Books Ltd: Ibadan.

¹⁴⁹ COLEMAN, J.S. AND COLEMAN, J.S., 1958. *Nigeria: Background To Nationalism*. Univ of California Press: Berkeley, 174-175.

to the office of the president and the office of the prime minister, as well as those relating to the press?"¹⁵⁰

This chapter contends that the action of the military was aimed at neutralising the claim from any quarter that power belonged to them, or to rally support from dissident soldiers and ethnic loyalties to usurp power based on the problems of ethnicity and regional dichotomy. The second action was promulgation of Decree No. 3,¹⁵¹ "which deals with the detention of certain specific persons in the interests of security of Nigeria for a period not exceeding six months".¹⁵² It was this section of the decree that opened the chapter on human rights violations and impunity in relation to the activities of military government in Nigeria.

The argument in the previous discussion shows that the military did not learn anything from the colonial state, because they simply emulated the negativity of the colonialists. A similar example is Kenya where in the absence of a legalized and official opposition, although the constitution allowed parliamentary democracy, President Kenyatta quickly created a highly centralized, authoritarian republic, reminiscent of the colonial state.¹⁵³

This means that politicians are expected to jealously guard against the coming to power of military rule to avert the problems of impunity and human rights violations. Thus, from the evidence adduced previously, the study discovered that colonial constitutions were tinkered with to accommodate northern politicians as well as provide cover for their participation. This singular act affected the entire country post-independence as the Nigerian State.

¹⁵⁰ OJIAKO, O .O. 1980. *Thirteen Years of Military Rule, 1966-1979*. Daily Times Publication: Lagos, 7-14; FAGBADEBO, O., 2007. *Corruption, Governance and Political Instability in Nigeria*. *African Journal of Political Science and International Relations*, 1(2), 028-037.

¹⁵¹ OJIAKO, O .O. 1980. *Thirteen Years*, Op.Cit. 13-14. *Mohammed Buhari Also Applied Decree No. 3 in the Height of His Human Rights Violations, Which He Called Recovery of Public Property Decree No. 3. It Was Also Inherited By General Babangida's Administration*. See Falola, T., Et Al. 1991. *History of Nigeria, Vol. 3, Nigeria in the 20th Century*. Longman Nigeria: Lagos, 192.

¹⁵² Ibid.

¹⁵³ Ibid.26.

Thus, the creation of Legislative seats to favour the Caliphate and politicians in the north destabilised the country.¹⁵⁴ A case in point is that, while Ukpabi explores in detail (in the first chapter of literature review), the origins of the West African Frontier Force (WAFF), he claims could be written in terms of the history of Northern Nigeria from 1897–1906 because they were the martial force.¹⁵⁵

The study also notes that the counter coup of July 1966, orchestrated by the northern military class, was aimed at redressing perceived injustices following the first coup of 1966 in which northerners and western leaders were killed, while Igbo leaders were spared.¹⁵⁶

Therefore, the coming to power of a crop of military officers from the north¹⁵⁷ was heralded by the Caliphate and encouraged to hold on to power¹⁵⁸ at all costs, even at the expense of human rights violations. The effect of this development according to Tanko Yakassai, one of the northern leaders, was that “federalism was completely ruptured, and the traditional one-line command of the military was introduced into governance”.¹⁵⁹

On this matter Nnamdi Azikiwe noted: “the role of the military in a state is to preserve the territorial integrity of that state...But what we have now in many parts of Africa is the military not only seeking to preserve the territorial integrity but to rule the state as well”.¹⁶⁰ If this is the reality, why did the Northern oligarchy pretend that all was perfect? And why did they use AL haji Aminu Saleh to truncate the transition agenda?¹⁶¹ This can be explained from the nature of domination and the web of political intrigue in Nigeria.

¹⁵⁴ AKPOFURE, R., CROWDER, M., 1966. *Nigeria: A Modern History For Schools*. Faber and Faber Ltd: London., 214-229.

¹⁵⁵ Ibid.

¹⁵⁶ SIOLLUN, M., 2009. *Oil, Politics and Violence: Nigeria's Military Coup Culture (1966-1976)*. Algora Publishing: New York.

¹⁵⁷ Ibid.

¹⁵⁸ NWANERI, F. (2016, JULY 29.) *Special Report, July 29: “A Significant Date in Nigeria’s History”*, 11-20.

¹⁵⁹ OGUNBANKE, T. (2016, July 29). *Special Report, “50th Anniversary of July 29, 1966 Coup”*. New Telegraph Newspaper, 13.

¹⁶⁰ Quoted in OMOTUNDE., & BABARINSA, D. (1994, November 21). “Zik At 90. History Will Be My Witness”.

¹⁶¹ OZOEGBE, K. (1995, July 10) “Don’t Go” *the News Magazine*, 14-17.

It is important to assert that the Caliphate has continued to undermine the clamour for a national conference to discuss the state of the union¹⁶² as well as the Oputa Commission, mainly because past human rights violations were committed under the its watch against other ethnic groups. The effect of this dilemma is that Nigeria is postponing a critical debate that stands to redefine the nation and its obligation to the peoples of Nigeria.

This could partly be due to difficult logistics of transition, and the contentious atmosphere of civilian politics, provided ample pretext for additional postponements¹⁶³. Developing the situation further, the effects of military rule on transition politics, as well as the response of civil society to defend the masses from autocratic rule will be examined.

2.6 Political transition of military rule, 1966–1999

This section is an overview of military rule and the dynamics of transition politics in Nigeria from 1966 to 1999. This is important, not just because of its place in Nigerian history, but the fact that the military redefined Nigerian politics in the second half of the twentieth century. The activities of some military regimes are highlighted because of their transition politics and human rights violations employed to intimidate opponents and perceived critics to take power.¹⁶⁴

Arguably the military would not have survived long were it not for the cooperation of some political elites.¹⁶⁵ Thus the autocratic rule of the military eventually led to the Oputa Commission, as a transitional justice mechanism, and marginalisation that dragged Nigeria into a pariah state,¹⁶⁶ a situation in Nigeria

¹⁶² ADEKOYA, A. (2009, December 22) *Politics Special*. "Wanted: Action On High Points of Achebe Colloquium Resolutions," 46. Also See *Tell Magazine*, November 21, 1994, 12.

¹⁶³ LEWIS, P.M., 1994. *Endgame in Nigeria? the Politics of A Failed Democratic Transition*. *African Affairs*, 93(372), 323-340.

¹⁶⁴ MOMOH, A. 2012. "Akinyele and the Politics of Nadeco". in IMOBIGHE, T.A., & ALLI, W.A. ed. *Perspectives On Nigeria's National Politics and External Relations: Essays in Honour of Professor A. Bolaji Akinyemi*. Ibadan University Press Ltd: Ibadan., 36-52.

¹⁶⁵ AMUWO, K. 2001. "Introduction". in *Transition As Democratic Regression: Nigeria During the Abacha Years, 1993–1998. the domestic and International Politics of Democratization*. Ibadan: Institut Francais De Recherché En Afrique, 1-56.

¹⁶⁶ FAWOLE, W.A., 2003. *Nigeria's External Relations and Foreign Policy Under Military Rule, 1966-1999*. Obafemi Awolowo University Press: Ibadan, 221-305.

described by scholars as the descent of the iron curtain.¹⁶⁷ Mutua's writings on 'Kenya and Transitional justice' re-emphasises the latter's notion that, "In fact, policy-makers and statesmen now increasingly realize that a human rights state, a political society that internalizes human rights norms - cannot be created unless the society concretely addresses the grievances of the past. On the issues pertaining the truth commission, he says that it has become the effective tool for addressing the abominations of the past".¹⁶⁸ A case that is correlated with Nigeria's intentions for the creation of the Oputa Commission.

During the final years of military rule in Nigeria were significant because of the atrocities committed during the period and the forceful push of civil society to rid the country of autocratic rule. It should be recalled that the Babangida administration annulled the June 12, 1993 election won by Chief Moshood Abiola for reasons that cannot be substantiated,¹⁶⁹ but rather an attempt to continue with prolonged military rule and transition politics. With the fall of the Babangida administration, the interim government of Chief Ernest Shonekan lasted for six months. Thereafter, Abacha's regime came to power and became more autocratic to opposition and perceived enemies including civil society groups. Nigeria therefore became a pariah state with sanctions and boycotts from international engagements.

With the death of Abacha on June 8, 1998 the political tension subsided as Abdul salami Abubakar took power.¹⁷⁰ However, Chief Abiola was pronounced dead not long after Abubakar claimed power, following a heart attack. Consequently, a six-month transition programme was announced by the new regime, and elections were conducted leading to the emergence of Olusegun Obasanjo as president in 1999. The link between this section of the chapter and the main theme of the thesis – transitional justice – lies in the fact that human

¹⁶⁷ Ibid.

¹⁶⁸ MUTUA, M., 2004. *Republic of Kenya Report of the Task Force On the Establishment of A Truth, Justice and Reconciliation Commission*. *Buffalo Human Rights Law Review.*, 10, 15.

¹⁶⁹ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster: New York.

¹⁷⁰ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster, Op.Cit.579-583.

rights violations reared their ugly head after the military overthrew a democratically elected government in 1966,¹⁷¹ as Ogundiya in 2010 in his paper on “Democracy and Good Governance: Nigeria’s Dilemma”,¹⁷² argues; Yet this continued till 1999 when Obasanjo took power in a democratic election. The study argues that the military pursued prolonged transition politics to mislead Nigerians, merely for their own selfish ends and wealth accumulation.

This is seen in the way one military regime overthrows another with accusations of corruption and ineptitude, claiming they would resolve corruption, infrastructure decay, economic challenges and unemployment in the country. This was the mantra that brought Aguiyi Ironsi to power, Yakubu Gowon, Murtala Muhammed administration, Buhari’s regime and that of Ibrahim Babangida. The effect of this rhetoric set the country backward, as a new political transition date would be fixed, leading to experimentation, which was a waste of taxpayer’s money.

It should be emphasised that the tension of the period and political disintegration that occurred in the early years of independence led to the overthrow of the civilian government in 1966.¹⁷³ Since then there has been one form of transition politics or another, as well as a military coup culture.¹⁷⁴ The question therefore is: what was the state of the new independent nation? Ojiako (1979) notes that, “by far, the most important problem was the unfriendly relations among the regions of Nigeria.¹⁷⁵ A constant political friction was the imbalance in the size of the regions”.¹⁷⁶ This imbalance is equally emphasised by

¹⁷¹ MCCARTHY-ARNOLDS, E. “Africa, Human Rights, and the Global System: the Political Economy of Human Rights in A Changing World,” December 30, 1993. Africa Watch. “Academic Freedom”; 2011 Human Rights Reports: Nigeria. Bureau of Democracy, Human Rights and Labour, May 24, 2012. Human Rights Watch. “Everyone’s in On the Game – Corruption and Human Rights Violations By the Nigerian Police Force”, August 2010.

¹⁷² Ibid.

¹⁷³ SANDA, A.O., OJO, O., & AYENI, V. 1987. *the Impact of Military Rule On Nigeria's Administration*. Faculty of Administration, University of Ife: Ile Ife.

¹⁷⁴ For Moredetail, See SIOLLUN, M., 2009. *Oil, Politics and Violence: Nigeria's Military Coup Culture (1966-1976)*. Algora Publishing: New York.

¹⁷⁵ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster. 75-77. See JOSEPH, A. 1999. *Democracy and Prebendal Politics in Nigeria: the rise and fall of the second republic in Nigeria*, Spectrum Books Ltd: Ibadan, 109-116.

¹⁷⁶ Ojiako, J.O. 1980. *Thirteen Years of Military Rule, 1966-1979*. Daily Times Nigeria Ltd: Lagos, 1.

Adeyemo when he elucidated on the resurgence of violence in the Niger-Delta region as covered in chapter one of the section on literature review.

With the coming of military rule, an infringement on fundamental human rights and increased incidence of human rights violations occurred. The assistance of some politicians was generous, as they suddenly became collaborators, passing information not only on the position and plans of civil society groups but the general reaction of the public towards military rule,¹⁷⁷ A situation broadly discussed in Ojiako (1979)'s, *13 Years of Military Rule 1966–1979*.¹⁷⁸

The tacit support of some members of the political class provided leverage to the military in their quest for power. For instance, the military regimes of Generals Babangida and Abacha had to appoint seasoned civilian ministers of information as against military officers to disseminate information and do their bidding, since they understood the language of the political class and what they wanted to hear and know about democracy and transfer of power.¹⁷⁹

The hegemony of the military in the political and economic life of the country could not have been possible were it not for anti-democratic tendencies of civilian regimes removed from office in 1966 and 1983.¹⁸⁰ It was this development that led to the emergence of military contractors¹⁸¹ and consultants, who reassured them time and time again about the strategies to adopt in their transition programme and human rights violations¹⁸² Which had been reported in the Annual Report (1997), A CLO Report on the State of Human Rights in Nigeria,¹⁸³ The effect on the nation cannot be glossed over, because there was

¹⁷⁷ JEGA, A., 2001. *Democracy in Nigeria: Concepts, Representations, and Expectations. Nigeria During the Abacha Years, 1993-1998*.

¹⁷⁸ Ibid.

¹⁷⁹ Tom Ikimi, Sam Oyovbere, Alhaji Wada Nas, Walter Ofonogoro and Uche Chukwumerijie Were All Seasoned Technocrats and Politicians Who Worked As Nigeria's Information Ministers and Special Duties During the Military Rule of Generals Babangida and Abacha.

¹⁸⁰ JOSEPH, R.A. 2014. *Democracy and Prebendal Politics in Nigeria*, Vol. 56. Cambridge University Press: Cambridge.

¹⁸¹ Some of the Military Contractors Include Arthur Eze, Alao Arisekola and Dan Kobo, Among Others. They Profited From the System and Claim That 'No Abacha, No Nigeria.' For More Detail See, ADENIYI, O. 2005. *the Last 100 Days of Abacha*. the Book House Co: Lagos., 230.

¹⁸² FAYEMI, J.K., 2003. *Entrenched Military Interests and the Future of Democracy in Nigeria. Federalism in Africa: the Imperative of Democratic Development*, 2.

¹⁸³ Ibid.

division and palpable mistrust among the political elites, as some groups were friends of the military while others were opponents. Thus, extrajudicial killing and human rights violations became widespread.

It is therefore important to take a critical look at transition politics and the human rights record of some military regimes in Nigeria and how they fared during the period. This will situate the facts in their proper context, as it has been argued in some quarters that the activities of the various military administrations reflect the hidden agenda of the Northern oligarchy in their quest for domination and resource control.¹⁸⁴

2.6.1 Gowon's regime

The role of Gowon's regime in the Nigerian Civil War and the promise to keep the country as an indivisible entity was commendable.¹⁸⁵ The regime confronted internal disorder and secession following the overthrow of the first republic and the assassination of prominent politicians, mainly from Northern and Western Nigeria. This section investigates the contribution of Gowon's regime in fostering unity and the theory of 'no victor, no vanquish after the civil war'¹⁸⁶ as laid out in Elaigwu (1985)'s, *Gowon: The Biography of a Soldier-Statesman*,¹⁸⁷ and in chapter one of the *History of the Nigerian Army 1863–1992* (1992).¹⁸⁸

Ironically, General Gowon did not learn much about the factors and forces that led to the fall of the first republic,¹⁸⁹ as he began to promote ethnic politics in the military and to perpetuate himself in power. Consequently, his regime became so corrupt that he told the world that money was not Nigeria's problem but how

¹⁸⁴ SIOLLUN, M., 2009. *Oil, Politics and Violence: Nigeria's Military Coup Culture (1966-1976)*. Algora Publishing: New York.

¹⁸⁵ FALOLA, T. 1991. *History of Nigeria, Vol.3*, 122-123.

¹⁸⁶ *This Was A Policy Adopted By General Gowon After the Nigeria Civil War in 1970 To Maintain the Fragile Peace in the Country.*

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ OJIAKO J.O. 1980. *Thirteen Years of Military Rule, 1966-1979*, 1-10. Also SeedUDLEY, B. J. 1971. *Western Nigeria and the Nigerian Crisis in Nigerian Politics and Military Rule: Prelude To the Civil War*, Edited By S. K. PANTER-BRICK; POST, K.W.J., & VICKERS, M. 1973. *Structure and Conflict in Nigeria, 1960-1965*. Heinemann: Ibadan.

to spend it.¹⁹⁰ He was further accused of demonstrating Machiavellian traits to fellow officers,¹⁹¹ especially his disposition towards non-Hausa ethnic officers and eminent groups.

This period proved to be an ideal situation for the northern oligarchy to pursue political and ethnic hegemony and by extension resource control over other ethnic groups, even at the expense of the nation's crisis. Eventually, this development led to the Nigerian Civil War from 1967 to 1970.¹⁹² The effect of the war was visible in the nation's backwardness, political stagnation and human rights violations. Gowon's regime was unashamedly corrupt to the macro level. It was not hidden from the public gaze. Thus, the anti-corruption crusade spread to the entire public service, thus, the purge of the public service that led to the retirement and dismissal of over 10,000 public servants nation-wide¹⁹³. Arguably, if the Gowon administration had settled for peace and diplomacy, as agreed in the meeting convened in Aburi, Ghana, perhaps Nigeria would not have experienced war or endured transition politics and human rights violations orchestrated by his and other regimes.

Consequently Gowon's regime capitalised on instability and the support of the Yoruba ethnic group to extend the handover date.¹⁹⁴ Rather than taking a stand on the handover date, the Gowon administration embarked on a number of economically and socially divisive projects, such as the Udoji Award, Salaries and Wages Review Commission, mandated to increase workers' salaries throughout the country, the population census and change of currency, to mention a few.

These projects were seen as misplaced priorities because the expectation of the masses was the handover date to a democratically elected government. Apart from exploring the life of Gowon and his political engineering in chapter one,

¹⁹⁰ See ELAIGWU, J.I., 1986. *Gowon: the Biography of A Soldier-Statesman*. West Books.

¹⁹¹ ELAIGWU, J.I. 1985. *Gowon: the Biography of A Soldier-Statesman*, Op.Cit. 148.

¹⁹² UWECHUE, R. 1971. *Reflections On the Nigerian Civil War: Facing the Future*. U.S.A: Africana Publishing Corporation, 3-7; OJIAKO, J.O. 1980. Lagos: Daily Times Nigeria Ltd., 40-45.

¹⁹³ ANAZODO, R.O., OKOYE, J.C. AND CHUKWUEMEKA, E.E., 2012. *Civil Service Reforms in Nigeria: the Journey So Far in Servicedelivery*. *American Journal of Social and Management Sciences*, 3(1), 17-29.

¹⁹⁴ FALOLA, T. 1991. *History of Nigeria*, Vol.3, 157-156.

the work of Eliagwu in 1986 also highlights the democracy agenda, which was truncated by the Dimka's coup of 1976.¹⁹⁵

These actions provoked some elements in the army to overthrow Gowon's government leading to the emergence of the Murtala/ Obasanjo government.¹⁹⁶ Unfortunately, Murtala Muhammed was assassinated in 1976 for his openness and willingness to handover to a civilian government.¹⁹⁷

2.6.2. The Mohammed/Obasanjo regime

This section focuses on the Murtala Mohammed and Olusegun Obasanjo regimes. Specifically, it investigates their contributions to Nigeria's political transition and democracy.¹⁹⁸ The chapter reveals that they were military democrats concerned with the yearning and aspiration of Nigerians to return the country to civil rule. Besides, that is not to say there were no traces of human rights violations during their period of power. It would be beneficial to clarify from the outset that the Mohammed/Obasanjo regimes involved two military rulers.¹⁹⁹ The question here is: was their administration different from others or was it an extension or change of baton? Would it have done anything different and what were the expectations of Nigerians? These are some of the salient points for discussion.

The military, at all times, claim that it intervened to save the country from imminent collapse and disintegration²⁰⁰ and effectively carved a role for itself as the saviour and guardian of the nation.²⁰¹ Murtala's anti-corrupt crusade did not in any way deter the politicians of the second republic from corrupt practices,

¹⁹⁵ Op.Cit. 154-272.

¹⁹⁶ *Ibid.* Also Seedudley, B. J. 1971. *Western Nigeria and the Nigerian Crisis in Nigerian Politics and Military Rule*, Op.Cit. Post, K.W.J. & Vickers, M. 1973, Op.Cit.

¹⁹⁷ *Ibid.* Also See SIOLLUN, M., 2009. *Oil, Politics and Violence: Nigeria's Military Coup Culture (1966-1976)*. Algora Publishing: New York. 193-217.

¹⁹⁸ SIOLLUN, M. 2009. *Oil, Politics and Violence*, Op.Cit. 161-164.

¹⁹⁹ *General Muritala Mohammed and General Olusegun Obasanjo—Onuoha, B. 2002. Reflection On the Transition Programmes in Transition Politics in Nigeria, 1970-1999, ONUOHA, B. AND FADAKINTE, M.M., 2002. Transition Politics in Nigeria, 1970-1999. Malt House Press: Lagos, 23-27.*

²⁰⁰ See OJIAKO, J. O. 1980. *Thirteen Years of Military Rule, 1966-1979*.

²⁰¹ AGBEBAKU, P.E. 2000. *Demilitarisation of the Polity and the Sustenance of Democracy. Lagos: Centre For Constitutionalism and Demilitarisation, 10.*

rather they engaged in different shades of corrupt practices²⁰² rooted in the writings of Oarhe and Aghedo (2010), “The Open Sore of a Nation: Corruption and Internal Security in Nigeria”,²⁰³ Oluwaniyi (2011), “Police and Institution of Corruption in Nigeria, Policing and Society”,²⁰⁴ Onuoha (2009), “Corruption and National Security: The Three-Cap Theory and the Nigerian Experience”,²⁰⁵ Ogundiya (2010), “Democracy and Good Governance: Nigeria’s Dilemma”,²⁰⁶ and Bello and Odusote (2013), “The Matrixes of Bad Governance, Corruption and Insecurity in Nigeria”,²⁰⁷ which are evidenced in the preceding chapter.

The assumed role was not entirely misguided, as the military had on occasion been called upon to play this all-important function by some vocal sections of the public in times of serious national crises.²⁰⁸ Following the assassination of Murtala Muhammad on 13 February 1976 by a group of dissident soldiers in Lagos, it became clear that some military elite were dissatisfied with the way the country was governed.

The assassination of Murtala Muhammad made it possible for Obasanjo, a southerner to have the first shot at the seat of power since 1960, the year of independence. Despite the shortcomings of the Obasanjo administration, it was different because he handed power to a democratically elected government. The regime was deemed successful since they met the general expectations of Nigerians and rule of law.²⁰⁹ This development rekindled the hope of politicians for democratic rule after the botched first republic, unlike the transition politics of their counterparts. It has been pointed out that most transition programmes of

²⁰² ANAZODO, R.O., OKOYE, J.C. AND CHUKWUEMEKA, E.E., 2012. *Civil Service Reforms in Nigeria: the Journey So Far in Service Delivery*. *American Journal of Social and Management Sciences*, 3(1), 17-29.

²⁰³ Ibid.

²⁰⁴ Ibid.

²⁰⁵ Ibid.

²⁰⁶ Ibid.

²⁰⁷ Ibid.

²⁰⁸ *Two Clear Examples of When Vocal Sections of the Nigeria Public Had Called Upon the Military To Intervene in the Body Politic Where Those That Marked the Collapse of the First Republic in 1966 and the Events Following the Annulment of the Presidential Elections of June 12 1993 Annulled By Military President Ibrahim Babangida*.

²⁰⁹ ONUOHA, B. AND FADAKINTE, M.M., 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press. in ONUOHA, B. AND FADAKINTE, M.M., 2002. *Transition Politics in Nigeria, 1970-1999*. Op.Cit.

military regimes, apart from Obasanjo and Abubakar's regimes, had used intimidation and human rights violations to prolong the life of their regimes rather than reform the body polity.²¹⁰

The effect of this tendency in Nigeria could be seen in the way transition politics were organised, thus in 1979, out of about three decades of nationhood the civilian government ruled for less than a decade. It was the impunity of military rule²¹¹ that subsequently led to the human rights violations that brought about the Oputa Commission to resolve the shambles of marginalisation, ethnicity and corruption.²¹²

2.6.3 Buhari, Babangida and Abacha's regimes

In this section, the three dictators in Nigeria their administrative impact on Nigerians their violation of human rights, and extrajudicial killing and incarceration of opponents are demystified. Military regimes in Nigeria exhibit patrimonial characteristics such as personal rule, absence of separation between the public and private realms, patron-client administrative networks, veneration of the ruler, massive corruption, ethnic/sectional-based support, and repression of opposition and violation of human rights. Most of the dangers posed by military rule to democracy are not really because of its intrinsic authoritarian posture, although it is the most perceptible. It is the patrimonial tendency in military rule that creates the most transcendent and pernicious effect on democracy because of unconcealed ethnic/sectional alignment of regime,²¹³ Which are previously grounded in the works of Coleman (1958), *Nigeria: Background to Nationalism*,²¹⁴ Nnoli (1978) *Ethnic Politics in Nigeria*,²¹⁵ Akinyele ed (2003), *Race Ethnicity and*

²¹⁰ "From the Editorial Suite" (1999, October 25) *News Watch*, Vol. 3, No. 16.

²¹¹ *the Killing of Ken Saro-Wiwa, Kudirat Abiola and Others That Led To Nigeria's Isolation From the Comity of Nations. For Moredetails, See MEREDITH, M., 2011. the State of Africa: A History of the Continent Since Independence.* Simon and Schuster: New York, 578-579.

²¹² *Detailed Information in TOYO, E. 2002. the Economics of Structural Adjustment: A Study of the Prelude To Globalisation.* First Academic Publishers: Lagos.

²¹³ IKPE, U.B., 2000. *Patrimonialism and Military Regimes in Nigeria.* *African Journal of Political Science/Revue Africainede Science Politique*, 146-162.

²¹⁴ Ibid.

²¹⁵ Ibid.

Nation Building in Africa: Studies in Inter-Group Relations,²¹⁶ and Osuntokun and Olukoju, eds. (1997), *Nigerian Peoples and Culture*.²¹⁷ Since the collapse of the second Republic in December 1983, Nigeria witnessed two distinct periods of military administration. The first period under General Mohammadu Buhari which began in December 1983 and ended in August 1985 and the second period in August 1985 until 1993 under General Babangida; thereafter, there was an interim government under Chief Ernest Shonekan which lasted six months, leading to the infamous regime of General Abacha that was terminated on June 8, 1998 and the coming of Abdul salami Abubakar's regime that handed power to a civilian democratic government in 1999.

It was the deception and highhandedness of the military regime that prompted the civil liberty organisation and its coalition partners to take back power from the military. The Nigerian military embarked on prolonged transition politics to preserve power and accumulate wealth, even against the collapse of the Nigerian State.²¹⁸

This began with the Buhari administration under which many Nigerians witnessed the so-called 'War against Indiscipline' (WAI). In his maiden broadcast to the nation, Buhari stated "it was in the discharge of national role as promoters and protectors of the nation's interest that the armed forces decided to effect a change in the leadership of the government of the Federal Republic of Nigeria".²¹⁹ Because military administrations have tended to see military tribunals as a more effective instrument for enforcing social discipline and achieving economic health, the Buhari government introduced special tribunals and probe panels to investigate public functionaries perceived to be corrupt under President Shahu Shagari.²²⁰

²¹⁶ Ibid.

²¹⁷ Ibid.

²¹⁸ OBI, C. 2002. *"Oil and the Politics of Transition in Nigeria"*. in ONUOHA, B., & FADAKINTE, M.M. eds. *Transition in Politics in Nigeria, 1970-1999*. Malt House Press Ltd: Ikeja.97-117. Also see DIAMOND, L.J., KIRK-GREENE, A.H.M. AND OYEDIRAN, O. eds., 1997. *Transition Without End: Nigerian Politics and Civil Society Under Babangida*. Boulder, Co: Lynne Rienner. Also Useful, AMUWO, K., ET AL. eds. 1998. *Federalism and Political Restructuring in Nigeria*. Spectrum Books and Ifra: Ibadan.

²¹⁹ Falola, T., Et Al. 1991. *History of Nigeria, Vol. 3, Nigeria in the 20th Century*. Longman Nigeria: Ikeja, 180-181.

²²⁰ FALOLA, T. et. al. 1991, Op.Cit. 192-193.

The effect was that past civilian governors were arrested and imprisoned. By this action, Nigerians thought that a messiah had come, but the reverse was the case. With the introduction of a special military tribunal under Decree No. 3 of 1984 called the Recovery of Public Property Decree,²²¹ he clamped down on the media and opposition groups. The worst aspect of his regime was the overthrow of a democratically elected Shehu Shagari government, citing excuses of corruption, nepotism and decay in infrastructure. This mantra was not even addressed even during the worst erosion of infrastructure in the country. He gagged the opposition and got rid of the so-called 'drug pushers' disobeying the pronouncement of a court with competent jurisdiction.

Buhari's administration was one of the juntas that set the country backward without vision or motive, to obey the northern oligarchy and perpetuate power.²²² Nigerians saw the Babangida government as an idle administration, particularly the way taxpayers' money was squandered in fruitless transition politics.²²³ General Babangida took power in 1985 with a view to returning the country to civilian rule but that was not to be. Meredith (2011)²²⁴, in discussing transition politics under General Babangida, explains:

The military ruler, prevaricated for four years before authorising political activity, then imposed rigid restrictions over the electoral process and finally tore up the result when it was not to his liking. By raising expectations about the return of civilian rule, allowing popular momentum to grow, and then arbitrarily terminating the whole exercise at the point when an election had been successfully concluded.²²⁵

²²¹ Ibid.

²²² JOSEPH, R. A. 1999. *Democracy and Prebendal Politics in Nigeria*, 129-150. Also See FALOLA, T., et al. *History of Nigeria*, Vol. 3, 18-24. *Additional Information in Abubakar, SA'AD. "the Northern Provinces Under Colonial Rule: 1900-1959". 447-481. in Groundwork of Nigerian History. ed. Ikime, O. 1980. Heinemann: Lagos, Repr., 2004.*

²²³ UWUJAREN, W. (1995, July 10). "Still in the Lurch," *News Magazine*, 10.

²²⁴ Ibid.

²²⁵ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster: New York. *A History*, Op.Cit. 394-396.

At the same time, it became visible to all Nigerians that the Babangida administration was massively corrupt.²²⁶ He had neither vision nor mission on how to better the country. Nigeria had a history of transition politics, and this was to engage the population in a series of national debates about when and how the military would disengage from politics. Panter-Brick (1978) argues that the debates in 1970 to 1974 produced the famous “diarchy” formula, which would have allowed both military and civilian collaboration and participation in democratic politics.²²⁷ Such debates also featured in the process of determining the type of constitution for the country. There was also the popular “I.M.F” debate in 1985/86 organised by the Babangida regime. On the record, these activities were designed to elongate military rule in the country without making any headway. It is obvious that military governments in Nigeria employed the rhetoric of a transition programme to gain the approval of the masses and promote their transition agenda. Normally, political transition was supposed to be a blueprint capable of laying the foundation for democratic rule. In other words, it is the successful handover from one civilian regime to the other, but the main objectives of Nigeria’s military dispensation were to accumulate wealth and promote ethnic politics;²²⁸ the later already discussed in the works of Nnoli (1978)²²⁹ Akinyele, ed (2003),²³⁰ and Osuntokun and Olukoju, eds. (1997),²³¹ and the violation of human rights that incidentally culminated in the Oputa Commission. The Babangida political transition began in 1987 with the recommendation by a political bureau to hand over power in 1990. Interestingly a minority report by the same bureau recommended 1992 as the handover date. The interest in the recommendation lay in the fact that the minority report provided General Babangida with “a fait

²²⁶ BELLO, A. AND ODUSOTE, A., 2013. *the Matrix of Bad Governance: Corruption and Insecurity in Nigeria*. in *Proceedings of the 46th Annual Conference of the Nigerian Association of Law Teachers Held Between the 22nd-26th April (606-643)*.

²²⁷ See PANTER-BRICK, S.K. ED. *Soldiers and Oil: the Political Transformation of Nigeria*. Frank Cass Ltd: London, 58-59.

²²⁸ *Transition Politics in Nigeria Presupposes That Delays, Defaults, Changes and Conflicts, Cases of Hidden Agendas and Others Strengthen the Military Hold On Power. For More Detail*. See ONUOHA, B., & FADAKINTE, M.M. eds. 2002. “Introduction”. in *Transition Politics in Nigeria, 1970-1999*. Malt House Press Ltd: Ibadan., 2.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ Ibid.

accompli” to accept 1992 as the year of handover to an elected body of Nigerians.²³² The implication was that Babangida had a blanket ticket to set or adjust the transition timetable.

This was not the first time this had occurred in Nigeria’s political space. For instance, General Gowon in 1974 declared that the 1976 handover date, which he announced in 1970, was no longer ‘realistic.’ It is remarkable to note that each regime had its own transition politics. General Gowon played an exclusive game of transition politics which isolated not only his colleagues in arms, but also civilians in terms of letting them know how he wanted to proceed with the nine-point programme announced at the end of the civil war²³³ which Uwechue (1971) in the ‘Reflections on the Nigerian Civil War: Facing the Future,’²³⁴ explored in great detail in the preceding chapters.

A transition to democracy involves attempts to put in place structures that will ensure democratic stability and engender unity. Some of the structures the military purportedly employed during the transition period include the party system, census, revenue allocation, and creation of new states. Others include public sector representatives, constitution making and institutional process to ensure access to state power for all groups.²³⁵ These became the hallmark of military regimes to show Nigerians the impermanent nature of the system and assured them of their corrective nature and desire to handover to civilians.²³⁶

The Babangida administration, on the other hand, not only depressed the Nigerian economy, but also distorted the unity of the Nigerian State. First, his structural adjustment programme collapsed the economy of Nigeria through the

²³² See *Report of the Political Bureau, Lagos, the Federal Government Printer, 1987. “Minority View,”* 220-224. Also See OLAGUNJU, T. et al. 1993. *Transition To Democracy in Nigeria, 1985-1993*. Ikeja: Safari Books With Spectrum Books, 169-171.

²³³ PANTER-BRICK, S.K., ED. *Soldiers and Oil: the Political Transformation of Nigeria*. Frank Cass Ltd: London, 23-24. Also See ONUOHA, B., & FADAKINTE, M.M. eds. 2002. “Introduction”. in *Transition Politics in Nigeria, 1970-1999*. Malt House Press Ltd: Ibadan., 4-5.

²³⁴ Ibid.

²³⁵ FAYEMI, K. 2003. “Governing the Security Sector in A Democratising Polity”. in Cawthra, G., & Luckham, R. eds. *Governing Insecurity: Democratic Control of Military and Security Establishment in Transitional Democracies*. Zed Books: London and New York.

²³⁶ Detailed Information in SIOLLUN, M., 2009. *Oil, Politics and Violence: Nigeria's Military Coup Culture (1966-1976)*. Algora Publishing: New York.

International Monetary Fund (IMF) and World Bank Loan, thereby causing poverty and untold hardship.²³⁷ Second, his prolonged transition programme plunged the nation into isolation leading to the crisis of June 12, 1993 elections, widely regarded as free and fair.²³⁸

And third, the administration led the country into ethnic politics and insecurity as the Igbo fled 'en masse' to avoid a recurrence of civil war in 1966. This was because, when Babangida felt secured enough, he began to undermine and destabilize the transition programme, which he had extravagantly planned. It was obvious that he had a hidden agenda, which was to keep him in power through dexterous manipulations. His most favourite strategy was dispensing largesse to powerful groups and individuals to buy their support. In the local parlance, this came to be known as "settlement"²³⁹. Abacha came to power after overthrowing the Interim Government set up by Babangida before his exit. The Abacha regime could be said to have been more patrimonial than Babangida's.²⁴⁰

2.7 Change and continuity

Change and continuity in Nigeria's political space has been difficult to achieve. This was due to the contending forces and factors that shaped ethnic politics, hegemony and resource control. It was these factors that installed and sustained military rule in Nigeria. Even when there was the desire as in the case of June 12, 1993 elections to surrender power to a democratically elected government, ethnic politics and regional sentiments prevented this from happening.²⁴¹ Therefore the military assumed that the political class have not learnt any lesson on governance, hence a manifestation of autocratic tendencies, prolonged military rule.²⁴²

²³⁷ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster, Op.Cit.383.

²³⁸ OMOTOSHO, T., & OYERANMI, S. 2014. *the June 12 Struggle As A Phenomenon in Nigerian Political History*. Afro Asian Journal of Social Science, 5(2).

²³⁹ IKPE, U.B., 2000. *Patrimonialism and Military Regimes in Nigeria*. *African Journal of Political Science/Revue Africainede Science Politique*, 146-162.

²⁴⁰ Ibid. 157.

²⁴¹ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster. Op.Cit.394-397.

²⁴² BABAWALE, T., 2006. *Nigeria in the Crises of Governance and Development: A*

An important question to be answered by this section is, whether there was any change and continuity in the Nigerian process and of what type was it? Babawale (2006) argues that: “evidence on the ground showed that in Nigeria little has changed about the political culture and the political system in general. Politics under this circumstance remains an investment, a business into which you put millions with the hope of reaping profits. The politics of ethnicity, region and religion continue as evident in the frantic search for a democratic alternative”.²⁴³

Fawole (1999) also asserts that Nigeria had simply lost both the initiative and vigour for which it was hitherto famous. General Abacha’s virtual illiteracy in global diplomatic affairs did not help matters, nor did Tom Ikimi’s combative approach to foreign policy avail much. It was not until the restoration of civilian rule in 1999 that the country regained its composure and confidence in foreign policy.²⁴⁴ Some other scholars affirm that Nigeria has not left the position it occupied in military regime following the human rights abuse human rights violations and prevailing politics of hatred and bitterness in the land.

Nevertheless, this section reveals that there was some change and continuity even after the death of Abacha.²⁴⁵ This was the case because well-meaning Nigerians rallied support to save the soul of the nation from disintegration. But change could only be mirrored in the way things were done and the structures that were put in place. While continuity reflects the trajectory of how certain issues were addressed and solution found in the political and socio-economic culture of the people, it was the absence of change and transformation during the military rule that led to human rights violations and eventually led to the establishment of the Oputa Commission. As will be pointed out in greater detail in Chapter 3, Abacha’s tenure was ruthless²⁴⁶ to a level unknown in the

Retrospective and Prospective Analyses of Selected Issues and Events, Education, Labour and the Economy. Lagos: Political and Administrative Resource Center.

²⁴³ BABAWALE, T. 2006. *Nigeria in the Crises of Governance*, Op.Cit.82.

²⁴⁴ Cited in FAWOLE, W.A. 2012. “*Nigerian Foreign Policy: the Search For A New Paradigm*”. in IMOBIGHE, T.A., & ALLI, W. eds. *Perspectives On Nigeria’s National Politics and External Relations: Essays in Honour of Professor Bolaji Akinyemi*. University of Ibadan Press: Ibadan, 150-169 (Specifically 162).

²⁴⁵ FAWOLE, W.A., 2003. *Nigeria's External Relations and Foreign Policy Under Military Rule, 1966-1999*. Obafemi Awolowo University Press: Ile Ife, 1966-99.189-203.

²⁴⁶ OLORUNYOMI, D. (1995, February 20) Cover Story. “*Agenda '99*”. *News Magazine*, 11-16. Additional Information in OLADIPO, D. (1999, October25) “*in the dock*”. “*News Watch*

history of military rule in Nigeria.²⁴⁷ These reprehensible acts, on the one hand, aggravated the sanctions and isolation of the country and on the other hand calls for secession by marginalised groups. The mysterious death of Abacha on June 8, 1998 led to the emergence of General Abdul salami Abubakar administration.²⁴⁸

He swiftly reversed the direction of the dictatorship by releasing scores of prisoners including General Olusegun Obasanjo, union chiefs and Ogoni dissidents, a move that heralded change. In addition, though, the death of Chief M.K.O. Abiola provided a new beginning and a clean break from the past. It was the continuity of ethnic and political alliance that prompted Abubakar's regime to move swiftly and implement a transitional process to hand over power within six months of his tenure.²⁴⁹

This effect led to relaxation of hostilities since victims of rights violations together with the political class held meetings of reconciliation and amnesty that had been missing over the years; arriving at a deal that assumed that Abdul salami Abubakar would successfully surrender power to a democratically elected civilian government. It was based on this compromise that the arrangement for a transitional justice mechanism was reached and Oputa Commission was set up afterwards to deal with all the crises surrounding the nation,²⁵⁰ Which is broadly presented by The Human Rights Violation Investigation Commission Report (May 2002),²⁵¹ and Shriver (1995), *An Ethic for Enemies: Forgiveness in Politics*²⁵² in the literature reviewed in chapter one.

Thus, local elections were held in December 1998, followed by state elections in January 1999 and elections for the national Assembly and that of the

Magazine, 8-11.

²⁴⁷ LEBEAU, Y. 2013. *Nigeria During the Abacha Years, 1993-1998: the domestic and International Politics of Democratization*. Institut Français De Recherche En Afrique.

²⁴⁸ ADENIYI, O. 2005. *the Last 100 Days of Abacha*, Op.Cit. 211-236.

²⁴⁹ FAWOLE, W.A., 2003. *Nigeria's External Relations and Foreign Policy Under Military Rule, 1966-1999*. Obafemi Awolowo University Press: Ile Ife. 221-230. Also See ONUOHA, B. 2002. "General Abdulsalami Abubakar and the Short Transition". in ONUOHA, B., & FADAKINTE, M.M. eds. *Transition Politics in Nigeria, 1970-1999*, 320-348.

²⁵⁰ ONUOHA, B., 2002. "General Abdulsalami Abubakar and the Short Transition," in ONUOHA, B. & FADAKINTE, M.M., *Transition Politics in Nigeria. 1970-1999*, 320-348 Specifically, 323- 335.

²⁵¹ Ibid.

²⁵² Ibid.

presidency in February 1999. Eventually Olusegun Obasanjo won the election, and in May 1999 and was sworn in as president and Commander-in-Chief of the Armed Forces of Nigeria.²⁵³ In fact, this turned out to be the much-desired change from military rule to democratically elected civilian government in Nigeria. This event marked the beginning of continuity of civilian rule last experienced in 1983, and the move to reconcile victims of human rights and the marginalised groups through a transitional justice process (Oputa Commission).

The above discussion has revealed the stalemate in Nigeria's long democratic journey and its effects on the nation, particularly the wanton destruction of life, economic sanction and the isolation of the country by the Commonwealth of Nations and her European partners. The discussion established the fact that there was change and continuity in Nigeria's political transition since Abubakar regime even though there are still traces of ethnicity and the clamour for resource control. If there was change, then what was the role of civil society groups in the change and continuity of this political transition in Nigeria?

2.8 Political transition – human rights violations and civil society organisations

This section examines the contribution of civil society groups in combating human rights violations in the last years of military rule in Nigeria. Although this theme will be discussed in more detail in Chapter Three, the discussion here focuses on the civil society organisation, its contribution and its affiliates in Nigeria. In fact, human rights violations began in colonial Nigeria. This section provides insight about the nature of human rights abuse perpetrated by the military junta, and the fight by civil society groups to expose injustice and intimidation of autocratic regimes in Nigeria, even up to the last days of Abacha's regime.²⁵⁴

²⁵³ MOMOH, A., & THOVOETHIN, P.S. 2001. *An Overview of the 1998-1999 Democratisation Process in Nigeria*. *Development Policy Management Network Bulletin*, 13(3),4-9; MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster: New York, 580.

²⁵⁴ ADENITI, O. 2005. *the Last 100 Days of Abacha*, Op.Cit. 211-235.

As previously evidenced in chapter one by Oarhe and Aghedo (2010), “The Open Sore of a Nation: Corruption and Internal Security in Nigeria”,²⁵⁵ Oluwaniyi (2011), “Police and Institution of Corruption in Nigeria, Policing and Society”,²⁵⁶ Onuoha (2009), “Corruption and National Security: The Three-Cap Theory and the Nigerian Experience”,²⁵⁷ Ogundiya (2010), “Democracy and Good Governance: Nigeria’s Dilemma”,²⁵⁸ and Bello and Odusote (2013), “The Matrixes of Bad Governance, Corruption and Insecurity in Nigeria”.²⁵⁹

This aspect of knowledge is equally significant in the wider debate on transition politics in Nigeria, the nature of atrocities committed by the military, and how civil society institutions galvanise to push the military government away from Nigeria’s political space.²⁶⁰ The purpose of this section, by extension, is to show that the role of civil society groups cannot be undermined in any society, for calling out on the government when its actions are anti-people. Records show that it was the concerted effort of the civil society groups that helped uncover the reprehensible acts of military rule in Nigeria and their contrived transition politics.²⁶¹ As a consequence, the Abacha regime went after the civil society, but while they operated underground they released their reports from time to time, describing the horrors of military rule and incarceration of opponents. The activities of civil society organisations came to the fore when the Buhari administration overthrew the democratic government of Shehu Shagari in 1983 and exploited repressive measures such as the Special Military Tribunals Decree No. 3 of 1984,²⁶² to gag the people in the name of recovery of public property,

²⁵⁵ Ibid.

²⁵⁶ Ibid.

²⁵⁷ Ibid.

²⁵⁸ Ibid.

²⁵⁹ Ibid.

²⁶⁰ MOMOH, A. 2012. “Akinyemi and the Politics of NADECO”. in IMOBIGHE, T.A., & ALLI, W.A. eds. 36-52. Also See OLORUNYOMI, D. (1995, February 6) “What’s Up, Abacha?” *News Magazine*. 10-13. See Cover Story (1995, February 6) “Go, Soldiers, Go”. *News Magazine*, 4-19.

²⁶¹ BAGAUDA, K. (1995, February 20) “Nadeco Holds the Ace”. *News Magazine*, 19-20. Also See MIKAIL MUMUNI (1995, February 6) “Freedom For Abiola? As Nadeco Leaders Meet With General Abacha”. *Tell Magazine*, 10-15. More detail in MOMOH, A. 2012. “Akinyemi and the Politics”. in IMOBIGHE, T., & ALLI, W.O. eds. *Perspectives On Nigeria’s National Politics and External Relations*, 36-52.

²⁶² FALOLA, T. et al. 1991. *History of Nigeria, Vol. 3, Nigeria in the 20th Century*, 192.

coupled with the harsh austerity policy which did not endear him to Nigerians. The administration became notorious for its poor human rights record and the effects it had on the image of the country and citizens. The attack on the media using military decrees to arrest journalists under the cover of darkness, including the so-called drug traffickers and oil thieves, was of great concern. Of more concern was the fact that military tribunals instead of civil courts tried those who were attacked by government, thereby denying them access to lawyers and a fair trial?²⁶³

The argument thus is that the use of special military tribunals to enforce public accountability creates a major social difficulty; it de-emphasises judicial control by virtue of the suspension of all legislative assemblies. Since military decrees including those that create special military tribunals cannot be challenged in court; the judiciary is emasculated by being effectively barred from playing its traditional role as a check on the arbitrary exercise of power.²⁶⁴ Babangida's human rights violations and the annulment of June 12 presidential elections damaged his profile; thus his position became untenable, forcing him to step aside as president in August 1993.²⁶⁵ The reason for this was because the Babangida regime made things worse through gross incompetence and unbridled corruption, waste and mismanagement of the nation's resources the neglect of non-oil sectors, and misplaced priorities.²⁶⁶ It is important to note that the explanations provided by the military did not satisfy most Nigerians, and that the international community roundly condemned the Babangida regime.²⁶⁷

Human rights violations escalated during his regime and that of his successor, General Abacha. This led to the Oputa Commission, because Nigeria was on the verge of war. The two administrations revealed the evils of military rule in Nigerian polity. Their activities were instigated by a clique that believed that power belonged only to them. Babawale (2006) contends that:

²⁶³ OBILADE, A.O., & ADESINA, S. 1996. eds. *Adherence To Democracy and Rule of Law: the Role of Political and Military Elite*, 171-185.

²⁶⁴ FALOLA, T., et al. 1991. *History of Nigeria*, Vol. 3, Op.Cit.193.

²⁶⁵ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster. Op.Cit.397.

²⁶⁶ OKAFOR, E. E. (2011). *Youth Unemployment and Implications For Stability of Democracy in Nigeria*. *Journal of Sustainable Development in Africa*, 13(1), 358-373.196.

²⁶⁷ Ibid. 200.

“Many known Nigerian politicians and critics expressed similar fears. Such fears were most probably spurred by the fact that Babangida administration subjected the programme to a countless number of adjustments...Chief Fawehinmi Gani put the number of decrees promulgated to regulate the Babangida transition programme at 57 as at October 1992 with 1,174 sections, excluding the subsections. These adjustments created bottlenecks for the transition process”.²⁶⁸

Similarly, General Abacha in his bid to consolidate his power and gain legitimacy that he desperately needed consulted widely with Abiola and other prominent political leaders after he assumed power. In fact, sixteen out of the thirty-three ministers in Abacha’s cabinet, who were vocal supporters of the restoration of the June 12 election, keyed into the administration.²⁶⁹ Abacha’s regime responded to this synergy with unprecedented cruelty and hard-line repression not seen before in the political history of Nigeria. Abiola, who had earlier proclaimed himself president on the basis of the June 12, 1993 election mandate was arrested, detained and subsequently charged for treason.²⁷⁰ He later died while still in detention on July 20, 1998. Abiola’s arrest and detention as well as the human rights dimension of the Abacha regime will be discussed in more detail in Chapter Three.

One clear lesson from the 1994 uprising was the retrogressive effect of deep ethnic and regional divisions in Nigeria, which made its people incapable of acting in a coherent way against the military imposition.²⁷¹ The deep division that existed before and after June 12, 1993 cut across different divides. While majority of the people of South West in Nigeria resisted the annulment of the June 12, 1993 Elections, a few politicians in the southwest supported the annulment. For instance, the likes of Olusegun Obasanjo never backed Abiola’s mandate. As a

²⁶⁸ BABAWALE, T., 2006. *Nigeria in the Crises of Governance and Development: A Retrospective and Prospective Analyses of Selected Issues and Events, Education, Labour and the Economy*. Political and Administrative Resource Center: Lagos.

²⁶⁹ “Who Killed Abiola?”, *the Nation*, April 10, 2017, 13.

²⁷⁰ ADENIYI, O. 2005. *the Last 100 Days of Abacha*, Op.Cit.

²⁷¹ SUBERU, R. T. 2001. *Federalism and Ethnic Conflict in Nigeria*. United States Institute For Peace: Washington D.C, 20-21.

vexed national issue, why did Ernest Shonekan, a Yoruba, accept the invitation to head the interim government knowing full well that the mandate for Abiola, his kinsman, was unresolved? The same applied to the North and southeast regions that remained nonchalant about the revalidation of the June 12, 1993 mandate, because they felt the mandate was ethnic based, as if it was purely a southwest affair rather than a pan Nigerian mandate.²⁷²

To promote Abacha's ambition to remain in power, the regime sponsored groups such as Youth Earnestly Ask for Abacha (YEAA), which called for a protest march of two million people in Abuja to request Abacha become a civilian president.²⁷³ To counter the march, civil society staged a five-million-protest march in Lagos in opposition to the self-succession bid. The Abacha Must Stay march was reported to have cost N3 billions of taxpayers' money.²⁷⁴

Other sectors of civil society critical in opposing the Abacha self-succession plan were the media and the National Democratic Coalition (NADECO), dominated by the Yoruba intellectual class. Momoh (2012) observes that NADECO was not the first elite social movement or non-governmental organisation to challenge the excesses and despotism of military rulers. Olusegun Obasanjo's Association for Democracy and Good Governance in Nigeria (ADGN) formed in May 1993 also had the intention of enthronement of democracy and equity, respect for rule of law and restructuring Nigeria.²⁷⁵

The ADGN was critical and outspoken but did not receive the kind of persecution meted out to NADECO members and adherents.²⁷⁶ NADECO used three main tactics to wage its struggle against the Abacha junta – mobilising members of the (then) National Assembly against Abacha's political moves, the use of trade unions (not the Nigeria Labour Congress of Paschal Bafyau, but

²⁷² "Who Killed Abiola?", Op.Cit. See Also OBILADE, A.O., & ADESINA, S. 1996. eds. *Adherence To Democracy and Rule of Law: the Role of Political and Military Elite*. 171-185.

²⁷³ ADENIYI, O. 2005. *the Last 100 Days of Abacha: Political Drama in Nigeria Under One of Africa's Most Corrupt and Brutal Military Dictatorships*. Book House Company: Lagos.

²⁷⁴ *the News Magazine* 16, March 1998, 15.

²⁷⁵ MOMOH, A. 2012 "Akinyemi and the Politics of Nadeco". in IMOBIGHE, T.A., & ALLI, W.O. eds. *Perspectives On Nigeria's National Politics*, Op.Cit. 38.

²⁷⁶ For More detail See ENEMUO, F., & MOMOH, A. 1999. "Civic Associations". in OYEDIRAN, O., & AGBAJE, A. eds. *Nigeria: Politics of Transition and Governance, 1986-1996*. Dakar: Codesria Books, 92.

NUPENG and PENGASSAN), and market women and other popular groups such as the Campaign for Democracy (CD) and the clergy. This meant that NADECO's tactics were multi-tracked and complex. Attempts by the Abacha government, including the Yoruba ministers on his cabinet, to discredit NADECO and its struggle failed.²⁷⁷

Most media organizations in the country also joined forces to oust the regime. For some of them, it was a time to pay for a clampdown on their media houses and murdering some of their colleagues, for example, Bagauda Kaltho of TELL Magazine and several others.) It was obvious that human rights violations in the Abacha era painted Nigeria in a bad light, for example, Kudirat Abiola, Pa Rewane and several others were murdered.²⁷⁸ It forced a coalition of pro-democracy and human rights organisations, the Commonwealth of Nations, regional and sub-regional blocs, and other advanced democratic nations to persuade the military to return Nigeria to democracy. The character of Abacha's regime caused so much strain and disillusionment, even within the military, that they lost the will to continue in government after his demise. Records indicate that after the death of Abacha, the military in Nigeria had poor reputation and human rights record and little support at home and abroad, perhaps due to the campaign of the Civil Liberty Organisation²⁷⁹ and NADECO in exile.²⁸⁰

Onuoha (2002) also underscores that the deceased Head of State certainly did not enjoy support from most citizens. This was partly due to his rather unpopular bid to succeed himself in office, and because he was discredited because of the general opinion that he and his agents sponsored state terrorism, including the assassination of prominent Nigerians who opposed his government.²⁸¹

²⁷⁷ FAYEMI, K. 2005. *Out of the Shadows: Exile and the Struggle For Freedom and Democracy in Nigeria*. CDD and Book Craft: Lagos and Ibadan, 139.

²⁷⁸ FAWOLE, W.A. 2003. *Nigeria's External Relations and Foreign Policy*, Op.Cit.189-191.

²⁷⁹ Details in ANNUAL REPORT 1997: A CLO Report On the State of Human Rights in Nigeria; Also See *Annual Report 1997: A CLO Report On the State of Human Rights in Nigeria*.

²⁸⁰ MOMOH, A. 2012. "Akinyemi and the Politics of Nadeco". in IMOBIGHE, T.A., & ALLI, W.O., eds. *Perspectives On Nigeria's National Politics*, Op.Cit. 43-45.

²⁸¹ ONUOHA, B. 2002. "General Abdul Salami Abubakar and the Short Transition". in Onuoha, B., & Fadakinte, M.M. *Transition Politics in Nigeria, 1970-1999*, 320-348.

The history of human rights violations and atrocities committed by the military regime was the main thrust of the Oputa Commission, as a transitional justice mechanism, to resolve these crises for the future of the country. After all, a nation in deep acrimony cannot move forward without the resolution of internal conflicts. One can safely argue that the hostilities of Abacha's government were extreme, for example, the bombing of innocent citizens and state orchestrated killing of perceived enemies and opposition groups. It is why Okafor (2011) has stated, that:

"The Abacha strategy was quite clear: divide civil society by playing groups against each other; bribe, misinform, and co-opt; intimidate the leaders of protests and their organizations into silence; contain restless communities, especially the minorities, across the country; rehabilitate discredited politicians and retired military leaders; continue the system of graft, waste, and mismanagement; consolidate the power of the armed forces; and postpone the transition to civil rule for as long as possible. These objectives have run into very serious obstacles.'

2.9 Conclusion

It is clear from the above discussion that the Nigerian State was a victim of situations that it could not control, considering its political transition in the colonial state and the transition politics of the military, characterised by human rights violations that eventually led to the establishment of the Oputa Commission. The Nigerian State was neither planned nor envisaged to work and exist as a federation. Thus, the people and nation lost a pan Nigerian vision capable of taking the country to enviable heights and sustainable political organisation. Pre-colonial culture endowed the regions with sustainable political and socio-economic life entirely different from one another, but adequate for integration and pattern maintenance.

However, the Richards Constitution of 1947 introduced the politics of regionalism simply to create divide and rule politics and administrative convenience for the colony. Rather than achieve this objective, it led to ethnic

politics and hegemony that further introduced division, resource control and dominance in the colonial state. British crusaders ignored the suggestions of nationalists to balance the nation equitably and avoid human rights violations. Unfortunately, the constitutional question dragged on till independence, when politicians hoped to resolve the crisis at a round table meeting, but that was not to be; rather it culminated in population census and the election crisis of 1964.

This study notes that the interplay of ethnic politics and religion had wide-ranging and far-reaching implications for Nigeria's political transition and emergent democracy. Without the balance of power between north and south, Nigeria as a nation would be in more trouble in future. It is therefore suggested that a sincere and holistic national dialogue to examine the political complexities of Nigeria and the balance of power will be the way forward. This exercise will no doubt compliment the work of the Oputa Commission and various other national dialogues that Nigeria has held in the past.

This study further suggests that the various components of the Nigerian State would thrive better as a confederation or a loose federation (as was the case in some advanced countries), since it was an attempt to rid the country of corruption, ethnic sentiment and power imbalance that initially led to the military incursion in 1966. The effect of the change from democratic rule to military administration meant the nation stagnated for a long time.

The Gowon regime came with military decrees that denied people legal justice and freedom of the press. Potential enemies of the State and anti-loyalists were also arrested. This continued for about nine years during Gowon's administration, in the face of human rights violations and prolonged transition politics that finally led to the overthrow of this regime in 1975. On the other hand, the Obasanjo administration handed power to a democratically elected government in 1979. But the challenges of the nation came to a head during the Buhari regime, when the civilian government was overthrown, and draconian laws were introduced that gagged the media, freedom of human rights and pro-democracy organisations.

The Babangida era did not fare any better. It led the country into a quagmire of political uncertainty and economic disequilibrium. It was the regime

that annulled the June 12, 1993 elections, purportedly won by Moshood Abiola. He did not tell Nigerians why he cancelled the elections. Even though he was invited to attend the Oputa Commission, he turned down the invitation. Well-meaning Nigerians viewed this as impunity. The Babangida regime was the worst administration Nigeria endured. This is because it plunged the country into bankruptcy, the effect of which is still being felt today. Abacha's regime was a catastrophic experience for the Nigerian people. It brought the nation into international disrepute and isolation, particularly from the Commonwealth of Nations and advanced economies for the extrajudicial killing of Ken Saro Wiwa and his Ogoni kinsmen, Kudirat Abiola and Pa Rewane.

The atrocities committed during this era made the establishment of the Oputa Commission inevitable. This chapter notes that the coming to power of Abubakar Abdu salami gave hope and respite to Nigerians. He was best remembered for handing power to a democratically elected government in 1999, probably because the military was tired of reactions and sanctions within and outside the country. Olusegun Obasanjo won the election. This marked the beginning of more civilian rule known as the fourth republic. The evidence in this chapter established the fact that there was change and continuity in Nigeria's political transition from military rule to democratic rule.

The Oputa Commission was a landmark in the history of Nigeria because it afforded victims of human rights violation the opportunity to confront their opponents in public arena and to some extent, brought home reconciliation and unity to warring communities in the country, but attempts at restoration and compensation for victims of human rights violations proved abortive.

CHAPTER THREE

HISTORICAL OVERVIEW OF HUMAN RIGHTS VIOLATION IN NIGERIA

3.1 Introduction.

The situation of human rights in Nigeria during the period of military regimes is the central theme. The chapter will investigate why so much human rights violation occurred in the country at that time, even though Nigeria had ratified most of the international human rights instruments.¹ The reason as to why these instruments have not translated well into domestic law and practice for the protection and advancement of human rights in Nigeria will be questioned.² A working guide to this inquisition can be borrowed from the literature reviewed in the previous chapters which is in tandem from what Akinyeye's examines on contemporary issues of international relations and the place of Nigeria in the wider world.³ The book, was previously noted to have had a bearing to this work, but central, was Solomon O. Akinboye's *Nigeria-South Africa Relations in the 20th Century: A Case of Symbiosis and Reciprocity* (257-283).⁴

The standard definition of human rights in this chapter and the thesis is taken from the Stanford Encyclopaedia of Philosophy:

¹ *Convention Against Torture and Other Cruel Inhuman Or Degrading Treatment Or Punishment; International Covenant On Civil and Political Rights; Convention For the Protection of All Persons From Enforced Disappearance; International Convention On the Elimination of All Forms of Racial Discrimination; International Covenant On Economic, Social and Cultural Rights; International Convention On the Protection of the Rights of All Migrant Workers and Members of Their Families; Convention On the Rights of the Child Crc; Convention On the Rights of Persons With Disabilities; African Charter On Human and Peoples Rights.*

² CRENZEL, E., 2012. *the Memory of the Argentina Disappearances: the Political History of Nunca Mas*. Routledge: New York; LESSA, F. 2013. *Memory and Transitional Justice in Argentina and Uruguay Against Impunity*. Palgrave Macmillan New York; HAYNER, P.B., 2010. *Unspeakable Truths 2e: Transitional Justice and the Challenge of Truth Commissions*. Routledge: New York; STOCKWELL, J. 2014. *Stigma, Trauma and the Social Forces Shaping Memory Transmission in Argentina*. *Portal Journal of Multidisciplinary International Studies*, 11(1).

³ Op.Cit.

⁴ Ibid.

[Human rights are] Norms that help to protect all people everywhere from severe political, legal, and social abuses. Examples of human rights are the right to freedom of religion, the right to a fair trial when charged with a crime, the right not to be tortured, and the right to engage in political activity. These rights exist in morality and in law at national and international levels.⁵

Other writers have also defined human rights in similar terms.⁶ This approach clarifies the fact that human rights not only represent moral claims, but they are legally enforceable and claimed against the state.⁷ The claim of entitlement is further justified by the fact that Nigeria had ratified all the core international human rights treaties, both at the United Nation's level and the Africa Union regional level.⁸ And further, all Nigerian constitutions since independence in 1960 contain a charter on fundamental human rights. It is therefore the responsibility of the Nigerian State, as a duty bearer, to ensure that human rights are respected, protected and fulfilled. Based on this analogy, this chapter argues that the Nigerian State during the period under review had failed in its human rights obligations to rights holders, especially during the many years of repressive military regimes.⁹

This chapter will argue it was because of the failure of state institutions to protect human rights that gross violations held sway in the country during the period under review.

Significantly, the thesis will analyse the failure of human rights culture in the country, evolution of the State in pre and post military eras, the pursuit of

⁵ NICKEL, J, "Human Rights", the *Stanford Encyclopaedia of Philosophy* (Spring 2017 Edition), Edward N. Zalta (eds.), URL = <<https://plato.stanford.edu/archives/spr2017/entries/rights-human/>>.

⁶ MOECKLI, D., SHAH, S., SIVAKUMARAN, S., & HARRIS, D. 2013. *International Human Rights Law*. Oxford University Press: Oxford; REHMAN, J. 2010. *International Human Rights Law*. Pearson Education: London.

⁷ ALSTON, P., & GOODMAN, R. 2012. *International Human Rights*. Oxford University Press: Oxford; ALSTON, P. 2013. *Does the Past Matter? On the Origins of Human Rights*. *Harv. L. Rev.*, 126, 2043-2479.

⁸ STEINER, H.J., ALSTON, P. AND GOODMAN, R., 2008. *International Human Rights in Context: Law, Politics, Morals: Text and Materials*. Oxford University Press, USA: Cary NC.

⁹ BEISER, M., WIWA, O., & ADEBAJO, S. 2010. *Human-Initiated Disaster, Social Disorganization and Post-Traumatic Stress Disorder Above Nigeria's Oil Basins*. *Social Science & Medicine*, 71(2), 221-227.

state security, and law and order to the detriment of the promotion of human rights.

This thesis will posit that the Nigerian State failed to comply with its international and domestic human rights obligations. In other words, Nigeria's failure to investigate and provide effective remedies in cases of gross violation of human rights affected its human rights record. This has cumulatively, over the years, encouraged and, indeed, given rise to a culture of impunity, whereby agents of the State, public functionaries and others generally need not fear punishment, or the application of sanctions for violating the human rights of other citizens.¹⁰

The agents of the State were well aware that they had the support of their superiors to commit human rights violations and they also knew they would be protected from any form of accountability by the military junta.¹¹ Owing to the above, an examination of the evolution of the State in the pre and post military era, the pursuit of state security, and law and order to the detriment of the promotion of regime of rights.¹² Also the use of ouster clauses, secret military tribunals rather than conventional courts, further exacerbated the situation.¹³

Therefore, it will be argued that, the rule of law and not men should govern. This is an important principle of governance, which came under attack during the period of military rule.¹⁴

One key question that needs to be posed is whether the origin of the culture of impunity is attributable to the nature of military governments themselves? This becomes increasingly important, since the military comes into power by violating the constitution and supplanting it with military decrees, imposed on the people.

It is noted that over time successive military governments in the country have belied their illegitimacy and unconstitutional rule by suspending the

¹⁰ OJAKOROTU, V. AND OKEKE-UZODIKE, U., 2006. *Oil, Arms Proliferation and Conflict in the Niger Delta of Nigeria*. *African Journal On Conflict Resolution*, 6(2), 85-106.

¹¹ OMOTOLA, J.S. 2009. *Dissent and State Excesses in the Niger Delta, Nigeria*. *Studies in Conflict & Terrorism*, 32(2), 129-145.

¹² IBEANU, O., & LUCKHAM, R. 2007. *Nigeria: Political Violence, Governance and Corporate Responsibility in A Petro-State*. in *Oil Wars*, Op.Cit.41-99.

¹³ LEBEAU, Y. 2013. *Nigeria During the Abacha Years, 1993-1998*, Op.Cit.

¹⁴ OLUKOTUN, A., 2004. *Repressive State and Resurgent Media Under Nigeria's Military Dictatorship, 1988-98 (Vol. 126)*. Nordic Africa Institute.

constitution upon seizing power by force. They modified the principle of separation of powers by proscribing the legislature and assuming its functions and powers. Even though the judiciary was not abolished, it was however hamstrung through decrees enacted to oust the judicial review of certain legislative action by the military government.¹⁵ The result is what may be described as legislative supremacy of the military,¹⁶ which is elucidated on in chapter one by Oluwaniyi (2011), in his writing on the “Police and Institution of Corruption in Nigeria, Policing and Society”,¹⁷ this is a fundamental departure from the principles of separation of powers and judicial review, which define a federal system of government.

However, it is like countries with no written constitutions or with supreme parliaments. The difference is that unlike military dictatorships the legislature, in a democratic country (e.g. the United Kingdom, where Parliament is supreme), the legislature represents the symbolic expression of popular will. This is determined through participatory democratic choice of the electorate in competitive elections, conducted under universal adult suffrage. This process ensures the accountability of members of parliament but also strengthens the legal tradition of rule of law, due process and democratic ethos of the imposition of checks and balances, on which the political system is anchored.

This chapter argues that the abiding desire of the military to govern, free of constitutional constraints, was clearly restated in the aftermath of the decision of the Supreme Court in the case of *Lakanmi and Anor v. A.G. of Western State*.¹⁸

The Supreme Court ruled in that case that the 1963 Constitution was the enabling statute of the military government rather than the takeover decree. In

¹⁵ Odeley.O. ed. 2013. *Doctrine of Natural Justice Under Civil and Military Administrations in Nigeria*, J. Pol. & L., 6, .231. FAGBADEBO, O., 2007. *Corruption, Governance and Political Instability in Nigeria*. *African Journal of Political Science and International Relations*, 1(2), 028-037.

¹⁶ SAMBO, A.O., & ABDULKADIR, A.B. 2012. *Ouster Clauses, Judicial Review and Good Governance: An Expository Study of the Experience in Nigeria and Malaysia (January 29, 2013)*. *Oida International Journal of Sustainable Development*, 5(09), 95-108. OBA, A.A. 2004. *African Charter On Human and Peoples' Rights and Ouster Clauses Under the Military Regimes in Nigeria: Before and After September 11*, *African Human Rights Law Journal*, 4, 275.

¹⁷ Ibid.

¹⁸ (1971) *University of Ife Law Reports* 21.

response to that decision the Supreme Military Council promulgated a decree, The Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970, asserting the nature of the change of government brought about by military takeover of government, and affirming that the 1963 Nigerian Constitution was not the legal basis for the new government. An important implication of the decree was that the 1963 Constitution (and other constitutions in force whenever the military illegally seizes power) remains in effect only to the extent that decrees enacted by military regimes in the country allow.¹⁹

The story of human rights in Nigeria would be incomplete without looking at human rights in the context of oil exploitation in the Niger Delta region.²⁰ A pertinent question is why has the area remained impoverished with poor water quality, pollution, disruption and degradation of farmlands and fishing ports, destruction of wildlife and biodiversity and loss of fertile soil after fifty years of oil exploration?²¹ As if this was not enough, there isn't provision of adequate compensation or planned mitigation policy for those affected.²²

As will be demystified later in this chapter, the response of the people in the form of protests and campaigns against multinational oil companies (MNCs) and their activities, led to the violation of their rights in the form of extrajudicial killings and other human rights violations, which the Oputa Commission report so eloquently spelt out.²³

¹⁹ AKANBI, M. AND SHEHU, T., 2012. *Rule of Law in Nigeria*. *Journal of Law, Policy and Globalization*, 3, 1-8.

²⁰ OBI, C. 2009. *Nigeria's Niger Delta: Understanding the Complex Drivers of Violent Oil-Related Conflict*. *Africa Development*, 34(2); OMOTOLA, S., 2006. *the Next Gulf? Oil Politics, Environmental Apocalypse and Rising Tension in the Niger Delta*. *Accord Occasional Paper*, 2006(3), 1-31.

²¹ OBI, C.I. 2010. *Oil Extraction, Dispossession, Resistance, and Conflict in Nigeria's Oil-Rich Niger Delta*. *Canadian Journal of Development Studies/Revue Canadienne d'études Du Développement*, 30(1-2), 219-236; OMEJE, K. 2005. *Oil Conflict in Nigeria: Contending Issues and Perspectives of the Local Niger Delta People*. *New Political Economy*, 10(3), 321-334.

²² WATTS, M. "SWEET AND SOUR". IN WATTS, M. ED. 2008. *Curse of Black Gold: 50 Years of Oil in the Niger Delta*. Power House Books: Brooklyn, NY, 36-61; *Niger Delta Human Development Report*. 2006. United Nations Development Programme (UNDP), Abuja, Nigeria.

²³ HUMAN RIGHTS VIOLATION INVESTIGATION COMMISSION. 2002. *the Oputa Panel Report, Volume 1: Summary, Conclusions and Recommendations*. Available At: [Http://Dawodu.Com/Oputa1.Htm](http://Dawodu.Com/Oputa1.Htm), 26 January 2009.

Because the status of human rights in Nigeria at the time democracy was restored in 1999 was in a fragmented state. There was a need to address past human rights violation. The new government rightly felt that the country had an urgent need to come to terms with its past to move forward. This thinking and a vocal civil society were amplified, if not encouraged, by the acclaimed success of the South Africa Truth and Reconciliation Commission (SATRC).²⁴

The SATRC process was widely acclaimed and arguably, more than any other process, influenced Nigerian leaders to establish an accountability process based on truth and reconciliation.²⁵ A notion that is in tandem was discussed by authors like Yusuf (2007),²⁶ Zehr (1990),²⁷ Akinyeye, ed (2003),²⁸ and Lillian Grissen.²⁹

While the latter was imperative for Nigeria's transitional justice, there is also a nexus from the Truth and reconciliation Commission of Kenya, which stipulated that transitional justice cannot be achieved unless the mistakes and atrocities of the past are properly, fairly, and comprehensively investigated, the perpetrators held accountable, and victims recognized, and their dignity restored.³⁰

The Human Rights Violation Investigation Commission (the Oputa Commission) was established on June 8, 1999 to investigate human rights violation inflicted on Nigerians by successive repressive military regimes that ruled the country for thirty years before democracy was restored in May 1999. The Commission received over 10,000 petitions which included cases of I) physical and mental torture, ii) unlawful arrest and detention, iii) murder/assassinations, IV)

²⁴ VAN DER MERWE, H., & CHAPMAN, A.R. 2008. *Truth and Reconciliation in South Africa: Did the Trc Deliver?* University of Pennsylvania Press; DOXTADER, E., & SALAZAR, P.J. 2007. *Truth and Reconciliation in South Africa: the Fundamental Documents*. New Africa Books: Cape Town.

²⁵ Gibson, J.L., 2006. *the Contributions of Truth To Reconciliation: Lessons From South Africa*. *Journal of Conflict Resolution*, 50(3), 409-432.

²⁶ *Ibid.*

²⁷ *Ibid.*

²⁸ *Ibid.*

²⁹ *Op.Cit.*

³⁰ MUTUA, M., 2004. *Republic of Kenya Report of the Task Force On the Establishment of A Truth, Justice and Reconciliation Commission*. *Buffalo Human Rights Law Review.*, 10, 15.

assault/battery, v) intimidation/harassment, VI) communal violence, and viii) disappearances.³¹

The Commission's mandate was to investigate who was responsible for this abuse and to make recommendations to the government on a way forward for the nation, divided by numerous ethnic, cultural and religious factions and where communal violence was prevalent.³²

Such violence is significantly linked to the reasons that led to the establishment of the Kenya Truth Justice and Reconciliation Commission (KTJRC). This is because the forty-year rule of Kenya then, by the Kenya African National Union (KANU) had failed to foster a culture of the rule of law and respect for human rights. Unfortunately, though, the list of these human rights violations and economic crimes was too long to tabulate. But the most severe have included political assassinations, torture and detention without trial, police brutality, massacres of communities, sexual abuse and violence against women and girls, politically instigated ethnic clashes, and a host of economic crimes such as the looting of the public purse and land grabbing. All these violations were perpetrated although the Kenyan constitution on its face guarantees fundamental rights. Over time, the government substantially eroded and weakened many of the safeguards since independence.³³

President Obasanjo while inaugurating the Oputa Commission said that the greatest benefit of the Commission was that:

"It would serve all of us not only to know the truth but also as a result of knowing the truth, for Nigeria not to have to go through the type of conditions and situations that they have gone through in not distant past".³⁴

³¹ PILAY, S. & SCALON, H. 2007. *"Peace Versus Justice? Truth and Reconciliation Commissions and War Crimes Tribunals in Africa"*, Policy Advisory Group Seminar Reports. Cape Town, South Africa 17-18 May, 2007.

³² OBADARE, E. 2014. *the Politics of Post-War Demobilization and Reintegration in Nigeria*. *Journal of Contemporary African Studies*, 32(3), 395-397.

³³ MUTUA, M., 2004. *Republic of Kenya Report of the Task Force On the Establishment of A Truth, Justice and Reconciliation Commission*. *Buffalo Human Rights Law Review.*, 10, 15.

³⁴ *Extracts From the Speech of President Obasanjo While Inaugurating the Human Rights Violation Investigation Commission On June 14, 1999.*

3.2 Issues and problems of human rights in Nigeria, 1960–1999

This section examines key issues and problems of human rights in Nigeria from the time of British colonial rule through to independence in 1960 until the restoration of democracy in 1999. The emphasis, however, is on the human rights situation from 1966 to 1999, the remit of the Oputa Commission.³⁵ The relevance of this approach is underlined by the fact that it was during this period that the country witnessed authoritarian military rule with attendant gross violation of human rights that became the hallmark of military regimes in Nigeria,³⁶ The issues are discussed in the previous literature by John de St. Jorre when he offers a background to the military regime in Nigeria, and in which he cites the military regime's human rights violations and widespread brutalities. As will be argued in this section, Nigeria did not start off with military dictatorships, but military intervention in the governance became a *fait accompli* due to the failings of political leaders in Nigeria.³⁷ These politicians stoked ethnic violence and other anti-democratic actions, which eventually truncated democracy and enthroned military dictatorship.³⁸ The military made use of decrees and this was mainly to abridge civil liberties, give itself legislative and executive powers and insulate its actions from judicial review.³⁹

Nigeria's history of constitutional development progressed from a unitary dependency to a semi-federal system between 1914 and 1951. In response to the demands of politicians, a fully federal constitutional system was introduced in 1954 via the Lyttleton Constitution, which established a federal constitution as well as constitutions for the regions. These measures, which granted autonomy to the regions, did not dispel the suspicion of ethnic minority groups, which were

³⁵ YUSUF, H.O. 2010. *Transitional Justice, Judicial Accountability and Rule of Law*. Routledge: New York.

³⁶ STROMSETH, J., WIPPMAN, D., & BROOKS, R. 2006. *Can Might Make Rights? Building Rule of Law After Military Interventions*. Cambridge University Press: Cambridge.

³⁷ FAGBADEBO, O., 2007. *Corruption, Governance and Political Instability in Nigeria*. *African Journal of Political Science and International Relations*, 1(2), 028-037.

³⁸ FRANK, E.O. AND UKPERE, W.I., 2012. *the Impact of Military Rule On Democracy in Nigeria*. *Journal of Social Sciences*, 33(3), 285-292.

³⁹ DADA, J.A. 2012. *Impediments To Human Rights Protection in Nigeria*. *Ann. Surv. Int'l & Comp. L.*, 18, 67.

identified by Nnoli (1978) Ethnic Politics in Nigeria in the previous sections⁴⁰, because they favoured the majority ethnic groups and failed to properly address their interests as minorities.⁴¹ In essence the regions were dominated by majority ethnic groups to the disadvantage of diverse minority groups, which accounted for about a third of the population.⁴² Fearing or alleging political domination and socioeconomic discrimination under the regional system, these minority groups embarked on a vigorous campaign for new regions or states in which their minority status could be substantially ameliorated, or completely eliminated. Osaghae and Suberu's statement points to the unfairness of majority over the minority because in it they contend that the period marked the beginning of the institutionalization of the regional system and the development of ethnic minority discontent in Nigeria".⁴³

This period also witnessed the establishment of a colonially appointed Commission of Inquiry into the Fears of Minorities and the Means of Allaying them.⁴⁴ The Commission was appointed by the Secretary of State for Colonies on September 26, 1957, principally to ascertain fears of minorities in any part of Nigeria, and to propose means of allaying those fears, whether well or ill-informed.⁴⁵ The second mandate of the Commission was to advise what safeguards should be included for this purpose in the Constitution of Nigeria. It should be noted that it was because of the recommendation of the Willink Commission that the 1960 independence constitution contained a charter of fundamental human rights.⁴⁶

⁴⁰ Ibid.

⁴¹ GOULD, M. 2011. *the Struggle For Modern Nigeria: the Biafran War, 1967-1970*. Ib Tauris: London.

⁴² *For Example, the Hausa-Fulani Dominated the Northern Region, the Yoruba's Dominated the Western Region While the Igbos Held Sway in the Eastern Region. Minority Ethnic Groups in All Regions Felt Marginalised in Terms of Political Appointments, Provision of Infrastructure and Developmental Programmes.*

⁴³ OSAGHAE, E.E., & SUBERU, R.T. 2005. *A History of Identities, Violence and Stability in Nigeria*. Centre For Research On Inequality, Human Security and Ethnicity, University of Oxford: Oxford.

⁴⁴ JACOB, R.I. 2012. *A Historical Survey of Ethnic Conflict in Nigeria*. Asian Social Science, 8(4), 13.

⁴⁵ WILLINK, H. ED. 1958. *"Nigeria: Report of the Commission Appointed To Enquire Into the Fears of Minorities and the Means of Allaying Them"*. Her Majesty's Stationery Office.

⁴⁶ *the Willink Commission Was Appointed By Her Majesty's Government To Enquire Into the Fears of Minorities and Means of Allaying Them On 26 September 1957.*

This section will argue that at the time Nigeria attained political independence in 1960 the constitution recognised all core rights contained in international human rights treaties as of 1960.⁴⁷ Citizens were emboldened with the right to seek redress in the law courts in case any of these constitutionally guaranteed rights were quashed. The 1963 constitution, apart from proclaiming Nigeria a republic, was merely a re-enactment of the Nigerian independence constitution, which had already put human rights architecture in place.⁴⁸ It is important to note that at the time of independence, British colonialists did not bequeath to Nigeria a stable and cohesive polity.⁴⁹ In fact the society post-independence leaders of Nigeria inherited from the British was a broken one.⁵⁰ Important to note is Perham's work, which investigated the early years of indirect rule in Nigeria and the various contradictions of nationhood. The chapters on the creation of Nigeria,⁵¹ indirect rule,⁵² and the Lagos opposition,⁵³ were central in the early discussion.

The British expansionism sowed seeds of division and conflict in Nigeria by bringing together people from different regions, religions and ethnic affiliations under one political umbrella.⁵⁴ Post-independence the first civilian government made no attempt to bridge this divide. The divisions deepened over time because of bitter struggle amongst contending regional forces for political control.⁵⁵ No doubt the protracted conflict paved the way for the first military coup in January 1966. The researcher argues that it was the concomitant effects of Nigeria being a broken and divided society, constantly living in fear and suspicion, which

⁴⁷ *Universal Declaration of Human Rights 1948, International Covenant On Civil and Political Rights 1966 and the International Covenant On Economic, Social and Cultural Rights 1966.*

⁴⁸ *Nigeria, 1963. the Constitution of the Federal Republic of Nigeria.* Federal Ministry of Information, Printing Division: Lagos.

⁴⁹ OMOTOLA, J.S. 2005. *Akinwumi, Olayemi. Crises and Conflicts in Nigeria: A Political History Since 1960.* *Journal of Conflict Studies*, 25(2)

⁵⁰ OGBEIDI, M.M. 2012. *Political Leadership and Corruption in Nigeria Since 1960: A Socio-Economic Analysis.* *Journal of Nigeria Studies*, 1(2).

⁵¹ Ibid.

⁵² Ibid.

⁵³ Ibid.

⁵⁴ PARKINSON, C. 2007. *Bills of Rights and Decolonization: the Emergence of Domestic Human Rights Instruments in Britain's Overseas Territories.* Oxford University Press: Oxford.

⁵⁵ HILL, J. 2012. *Nigeria Since Independence: Forever Fragile?* Springer: New York.

affected its cohesion to grow its democracy, which allowed military incursion into governance.⁵⁶ The military took over and refused to be subjected to legislative or judicial oversights. Human rights in Nigeria became a major casualty.⁵⁷ As will be seen the military style of governance negatively affected all institutions of state, created a climate of impunity, and impacted government's accountability for human rights violation.⁵⁸ The perception that even the first democratic government in Nigeria was reluctant to avail Nigerians of unfettered enjoyment of their human rights became evident with independence in 1960. In a speech to the Nigerian parliament, the then Prime Minister, Alhaji Tafawa Belewa sought the agreement of parliament to amend the constitution to permit administrative detention, but the proposal was rejected.⁵⁹ Alhaji Belewa lamented his limited powers to stop subversion.

“...We cannot stop, and we cannot forestall people who are planning evil... This is a very difficult situation in which we in government find ourselves. That was why the suggestion was made that we should find some means... to curtail liberty of a Nigerian citizen...”⁶⁰

3.2.1 Problems of military rule

This section discusses the problems of military rule in Nigeria and how this rule affected the protection of human rights. It is argued that even though the military usurped power by unconstitutionally overthrowing a democratic government, they claimed they were on a rescue mission to cleanse the Aegean stable created by the civilian government, and quickly retreated back to their barracks.⁶¹ However, in reality, they ended up perpetuating power, insulating

⁵⁶ EHWARIEME, W., 2011. *the Military Factor in Nigeria's Democratic Stability, 1999-2009. Armed Forces & Society*, 37(3), 494-511.

⁵⁷ OGBONDAH, C.W., 2000. *Political Repression in Nigeria, 1993-1998: A Critical Examination of One Aspect of the Perils of Military Dictatorship. Africa Spectrum*, 35(2), 231-242.

⁵⁸ OJO, E.O. 2014. *the Military and the Challenge of Democratic Consolidation in Nigeria: Positive Scepticism and Negative Optimism. Insight On Africa*, 6(1), 57-79.

⁵⁹ Professor Aihe Writes: “the Prime Minister's Speech Was Received With Mixed Feelings in Parliament and the Matter Was Shelved As A Result of Public Outcry”.

⁶⁰ *Federal Parliament Debate*, 7 August 1963, Col 2681, Quoted in D.O. AIHE 1958. *Selected Essays On Nigerian Constitutional Laws*, 151.

⁶¹ ISAAC, A. 2013. *Military Regimes and Nation Building in Nigeria, 1966-1999. African*

themselves from legislative and judicial control through enactment of ouster clauses, and assumed legislative and executive functions of government.⁶²

They suspended the fundamental human rights sections of the constitution, encouraged their roving bands of security operatives to operate outside the legal process and in defiance of international human rights standards, and finally encouraged a culture of impunity and lack of accountability.⁶³ The latter was also traced in Yusuf (2007)'s, "Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria",⁶⁴ in chapter one's reviewed literature. I therefore argue that the military institution and its officers created the environment in which human rights violation thrived in Nigeria.⁶⁵ The consequences were gross violation of human rights witnessed in Nigeria during the protracted period of military rule, which the Oputa Commission was established to address.⁶⁶ Reference can be traced from the works of Shriver (1995), *An Ethic for Enemies: Forgiveness in Politics*⁶⁷ in the preceding chapter.

In this regard, the Commission may not have been necessary if the military had not intervened in Nigerian governance. In Kenya also, this was partly the reason for establishment of the Truth Commission because it is evident that Police and security forces killed scores of reformers throughout the last two decades by 2004. Nevertheless, perhaps the most memorable use of state violence against prodemocracy advocates was the Saba incident of July 7, 1997 in which government agents killed more than a dozen Kenyans. Thus, the imperativeness of the truth commission to investigate Saba and other similar incidents.⁶⁸ This

Journal of History and Culture, 5(7), 138-142.

⁶² AKINRINADE, S., 2006. *An Army of Ex-Presidents: Transitions, the Military and Democratic Consolidation in Nigeria. Leadership Change and Former Presidents in African Politics*, 281.

⁶³ ONUOHA, B., & FADAKINTE, M.M. 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press: Lagos.

⁶⁴ *Ibid.*

⁶⁵ OGBONDAH, C.W. 1994. *Military Regimes and the Press in Nigeria, 1966-1993: Human Rights and National Development*. University Press of America: Lanham.

⁶⁶ Yusuf, H.O. 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria. International Journal of Transitional Justice*, 1(2), 268-286.

⁶⁷ *Ibid.*

⁶⁸ MUTUA, M., 2004. *Republic of Kenya Report of the Task Force On the Establishment of A Truth, Justice and Reconciliation Commission. Buff. Hum. Rts. L. Rev.*, 10, 15.

argument is strengthened by the fact that in an ideal democracy, institutions of the State exist to protect and promote the human rights of individuals.⁶⁹

The military's intervention in government has historically frustrated attempts to promote democratic rule in Nigeria.⁷⁰ Evidence of abuse, mismanagement, and corruption of military leaders undermines the perceived legitimacy of the military's right to intervene to restore order and social equilibrium. Yet those in power justified military intervention because of the country's complex social, political, and economic difficulties.⁷¹ In essence, they claimed they were on a patriotic mission.⁷²

Ehusani (2002) contends that the military's claim of patriotism is deceptive and mere camouflage for its real intentions, were not honest and altruistic as the military claimed. This is because for the many years of uninterrupted military dictatorship and the fact that military rule brought more hardship to the country than not".⁷³

It has been claimed that the first military intervention in 1966 was justified by the need to forestall the disintegration of the federation of Nigeria. However, the same cannot be said of subsequent regimes, which were obviously not motivated by national interest.⁷⁴ By assuming power, virtually every military regime in Nigeria promulgated the Constitution (Suspension and Modification) Decree, conferring plenary power on the military to ignore or dismantle existing legal and political institutions.⁷⁵

In order to neutralise the legal rules and processes constraining military power, parts of the constitution were suspended, abrogated or modified; political

⁶⁹ ROHT-ARRIAZA, N. AND MARIEZCURRENA, J. eds., 2006. *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice*. Cambridge University Press. 449-513.

⁷⁰ AKINRINADE, S. 2006. *An Army of Ex-Presidents*, Op.Cit. 281.

⁷¹ OKUYADE, O. 2013. *Continuity and Renewal in the Endless Tales of A Continent: New Voices in the African Novel*. *Ariel: A Review of International English Literature*, 44(1), 1-24.

⁷² OMOTOLA, S.J. 2008. *Democracy and Constitutionalism in Nigeria Under the Fourth Republic, 1999-2007*. *Africana: A Journal of Ideas On Africa and the African Diaspora*, 2(2).

⁷³ EHUSANI, G.O. 2002. *Nigeria: Years Eaten By the Locust*. Kraft Books: Ibadan.

⁷⁴ SARKIN-HUGHES, J., 2004. *Carrots and Sticks: the TRC and the South African Amnesty Process*. Intersentia Nv: Cambridge.

⁷⁵ EDEKO, S.E. 2011. *the Legality of the Constitution Versus the dictates of Military Power in A State of Revolution*. *Sacha Journal of Policy and Strategic Studies*, 1 (1), 137-158.

parties were disbanded and civil liberties were severely curtailed.⁷⁶ The military utilised four basic means to assert power: (1) abrogation of legislative and executive powers, (2) insulation of executive and legislative actions from judicial review, (3) abridgement of civil liberties, and (4) assigning adjudicatory functions to tribunals.⁷⁷ The act of military regimes in abrogating fundamental sections of the grand norm, which is the constitution, was a direct affront to the enjoyment of fundamental rights.⁷⁸ To further exacerbate, the situation military compounds were an affront to the constitution with further assault on the judiciary, which is the “temple of justice”.⁷⁹ Referring to Ojiako (1979)’s⁸⁰ work on 13 years of military rule as spelt out in chapter one, the military abrogated the powers of the judiciary to inquire over any actions of the military regime.⁸¹ The concomitant effect of this twin assault was to leave the people without any protection against military violations of human rights. The decree suspending the constitution and abrogating human rights is usually the most potent instrument used by the military to override human rights without any avenue open for judicial enquiry into its actions. In this regard the military, having blocked avenues to seek legal redress, moves against pro-democracy activists and other perceived opponents who dare oppose authoritarian military rule and clamoured for a return to democracy and rule of law.⁸² From such occurrences, the Oputa commission was needed, a notion that Yusuf discusses among others on the imperativeness of a Human Rights Violation Investigation Commission (the Oputa Commission), and its mandate and

⁷⁶ ODELEYE, D.O. 2013. *Doctrine of Natural Justice Under Civil and Military Administration in Nigeria*, the. *J. Pol. & L.*, 6,231.

⁷⁷ BRAHM, E. 2007. *Uncovering the Truth: Examining Truth Commission Success and Impact*. *International Studies Perspectives*, 8(1), 16-35.

⁷⁸ OKO, O. 2005. *Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria*. *Brooklyn Journal of International Law.*, 31, 9.

⁷⁹ OLOWOFOYEKU, A.A. 1989. *the Beleaguered Fortress: Reflections of the Independence of Nigeria's Judiciary*. *Journal of African Law*, 33(1), 55-71.

⁸⁰ *Ibid.*

⁸¹ SAMBO, A.O., & ABDULKADIR, A.B. 2012. *Ouster Clauses, Judicial Review and Good Governance: An Expository Study of the Experience in Nigeria and Malaysia*. *Judicial Review and Good Governance: An Expository Study of the Experience in Nigeria and Malaysia (January 29, 2013)*. *Oida International Journal of Sustainable Development*, 5(09), 95-108.

⁸² OLUKOTUN, A., 2004. *Repressive State and Resurgent Media Under Nigeria's Military Dictatorship, 1988-98 (Vol. 126)*. Nordic Africa Institute.

contributions to the discipline of “transitional justice and rule of law”.⁸³ The military regimes enacted policies through which they consistently abridged the rights of pro-democracy activists and ensured compliance with military rule. Prior to the first transition to civilian rule under Obasanjo in 1979, the main decision-making body was the military Provisional Ruling Council (PRC), which ruled by decrees.⁸⁴ The council oversaw the Federal Executive Council composed of military officers and civilians. The government observed some provisions of the 1979 and 1989 Constitutions, which were implemented but not adopted, or suspended by former military administrations.

Thus, without fully recognising any constitutional authority, the PRC was ultimately unrestricted in its scope of authority. Broad and often arbitrary laws promulgated through decrees permitted the harassment, arrest, detention, and mistreatment of citizens, and undermined constitutional protection against such abuse.⁸⁵ The military in Nigeria consistently undermined citizens' rights to due process, freedom of speech, and freedom to choose one's government, as well as other basic civil rights.⁸⁶ Clearly the military in Nigeria circumscribed the rights of the people by violating rule of law and undermining democracy.⁸⁷ The military treated Nigerians as their subjects and used violence to suppress dissent.⁸⁸ Rule of law was suspended with the suspension of the constitution and the replacement of civilian courts by military tribunals.⁸⁹ Members of these tribunals were military officers who had little knowledge of the law. The pinnacle of this authoritarianism was the public execution of the environmental rights activist, Ken Saro Wiwa, and

⁸³ Ibid. (See YUSUF.,2007).

⁸⁴ *the Constitution (Suspension and Modification) Decree No. 1 of 1966 State Security (Detention of Persons), Decree No. 3 of 1966 and Public Order and Security, Decree No. 34 of 1966, To Name A Few. These Threedecrees Subsisted in Varying Forms Throughout Subsequent Military Intervention in Nigerian Politics.*

⁸⁵ AIIMI, S. 2011. *Under the Jackboot: the Nigerian Tribune and Human Rights Agitation, 1984–1998.*

⁸⁶ AJAYI, G. 2007. *the Military and the Nigerian State: 1966-1993: A Study of the Strategies of Political Power Control.* Africa World Press: Trenton

⁸⁷ JOSEPH, R.A. 2014. *Democracy and Prebendal Politics in Nigeria*, Vol. 56. Cambridge University Press: Cambridge.

⁸⁸ FRANK, E.O., & UKPERE, W.I. 2012. *the Impact of Military Rule On Democracy in Nigeria. Journal of Social Sciences*, 33(3), 285-292.

⁸⁹ OKO, O., 1997. *Lawyers in Chains: Restrictions On Human Rights Advocacy Under Nigeria's Military Regimes. Harvard Human Rights journal.*, 10,257.

his eight kinsmen.⁹⁰ The many atrocities committed by the military gravely traumatised Nigerians and created the need for a process of accountability and healing when the military regime ended.⁹¹ The Oputa Commission sought to initiate such a process. The work of the Commission is evaluated in more detail in chapter four of the thesis, to determine whether the Commission achieved its mandate.

In conclusion, the violation of human rights during the period of military regimes and how the military used a combination of ouster clauses, secret trials and military tribunals to violate the human rights of Nigerians created rancour in the polity. This divided the nation and made reconciliation and healing a real necessity for the country to move forward.⁹²

3.2.2 Military tribunals and secret treason trials

This section discusses how the resort to the use of military tribunals and secret trials violated the human rights of Nigerians. This practice is considered a major setback in the story of human rights violation in Nigeria and it will be elaborated upon further in this section, as it negates the basic tenets of due process and fair trials.⁹³ The tribunals did not follow the regular procedure for criminal trials, established to ensure due process.⁹⁴ In essence the military, knowing full well that their unorthodox methods would not pass the test of rule of law and due process, resorted to the use of military tribunals to legitimise the persecution of their perceived opponents and critics.⁹⁵ The tribunals were given wide ranging powers of imposing severe punishments, including the death

⁹⁰ BIRNBAUM, M., 1995. *Nigeria, Fundamental Rights Denied: Report of the Trial of Ken Saro-Wiwa and Others*, Vol. 2210, Article 19.

⁹¹ YUSUF, H.O. 2009. *Transitional Justice, Judicial Accountability and Rule of Law—A Nigerian Case Study*, Doctoral Dissertation, University of Glasgow.

⁹² AKINTOLA, E.O. 2004. *Fundamental Human Rights Infringements: A Case Study of 30 Years of Military Dictatorship in Nigeria*. *Nigerian Journal of Research and Production*, 4.

⁹³ NWOGU, M.I.O. 2010. *Rule of Law in Governance in Nigeria*. *Nnamdi Azikiwe University Journal of International Law and Jurisprudence*, 1(1), 187-201.

⁹⁴ OKOGBULE, N.S., 2005. *Access To Justice and Human Rights Protection in Nigeria: Problems and Prospects*. *Sur. Revista Internacional Dedireitos Humanos*, 2(3), 100-119.

⁹⁵ LEWIS, P.M., 1994. *Endgame in Nigeria? the Politics of A Failed Democratic Transition*. *African Affairs*, 93(372), 323-340.

penalty, but they were not compelled to abide by the strict application of the law of evidence.⁹⁶ This was problematic because the standard of proof required to convict a defendant in criminal cases was not required in the tribunals, which convicted based on flimsy evidence.⁹⁷ To compound the already difficult situation; the military further resorted to secret trials outside the scrutiny of the public and held secret trials involving capital punishment.⁹⁸ This was the height of military disregard for rule of law and the fundamental rights of Nigerian citizens⁹⁹ as already observed in the History of Nigeria by Falola, et al., (1991).¹⁰⁰ The tribunals undermined the functioning of the regular court system in Nigeria. They were created to try politically motivated cases purportedly to bypass the rigorous scrutiny and delays that occur in the regular court system. The excesses of military tribunals and the violation of rights to due process inherent in military tribunals and secret trials raised serious questions of accountability.¹⁰¹ It was therefore important to revisit these transgressions on the rights of those affected by these trials and hold perpetrators accountable through the Oputa Commission.

To gain a clear understanding of the tribunals it is important to point out their salient features: established on an ad hoc basis; members were appointed by the Federal Military Government; jurisdiction of the ordinary court was ousted; no right of appeal to a higher tribunal¹⁰²; and tribunals do not respect international standards on the right to a fair trial. Further, the establishment of these tribunals was inconsistent with the Basic Principles on the Independence of the Judiciary.¹⁰³ The judges were also appointed by the executive, which calls into question their

⁹⁶ BIRNBAUM, M. 1995. *Nigeria, Fundamental Rights Denied: Report of the Trial of Ken Saro-Wiwa and Others*, Vol. 2210, Article 19.

⁹⁷ VUKOR-QUARSHIE, G.N.K. 1997, February. *Criminal Justice Administration in Nigeria: Saro-Wiwa in Review*. *Criminal Law Forum*, Vol. 8, No. 1, 87-110. Springer Netherlands.

⁹⁸ Amnesty International. 1995. *Nigeria, A Travesty of Justice: Secret Treason Trials and Other Concerns*. Amnesty International: New York.

⁹⁹ JOHN, E.O. 2011. *Rule of Law in Nigeria: Myth Or Reality?* *J. Pol. & L.*, 4, 211.

¹⁰⁰ Op.Cit. Vol.3,

¹⁰¹ OKOYE, F. 1997. *Special and Military Tribunals and the Administration of Justice in Nigeria*. Human Rights Monitor: Kaduna.

¹⁰² ODELEYE, D.O. 2013. *the doctrine of Natural Justice Under Civil and Military Administrations in Nigeria*. *J. Pol. & L.*, 6, 231.

¹⁰³ *Everyone Will Have the Right To Be Tried By Ordinary Courts Or Tribunal Using Established Legal Procedures*; HELLER, K.J. 2011. *the Nuremberg Military Tribunals and the Origins of International Criminal Law*. Oxford University Press: Oxford.

independence and impartiality inconsistent with principle 14 of the Basic Principles on the Independence of the Judiciary.¹⁰⁴ Further undermining the independence and impartiality of the tribunals was the presence of military officers who were members of the tribunal contrary to the clearly articulated provisions of article 7 (1) (d) and article 26 of the African Charter on Human and Peoples' Rights, and article 14 (1) of the International Covenant on Civil and Political Rights, which prescribed the standard of impartiality and independence of courts.¹⁰⁵

This section emphasises why the military used this method to circumvent rule of law and due process. It will be argued that military regimes historically relied upon the use of military tribunals operating outside the constitutional court system and outside the reach of an independent judiciary to secure and maintain power.¹⁰⁶ An example is the secret military trials of alleged coup plotters in 1995, The Special Military Tribunal which conducted the trial was established under the Treason and Other Offences Decree No. 1 of 1986 as amended¹⁰⁷, and was composed of armed forces officers appointed by the Head of State. The military tribunal was established following the arrest of twenty-nine civilians and officers, including General Olusegun Obasanjo in March 1995, for their alleged involvement in a plot to overthrow the government.¹⁰⁸

On June 5, 1995, twenty-two were charged before the Military Tribunal which conducted most of its proceedings in secret, allowing only one day for the trial to be open to the press in contravention of the provisions of Section 36 (3) of the constitution, which provides for court proceedings to be held in public. The Tribunal was given powers under Decree No. 1 to try any person on charges of

¹⁰⁴ *the Assignment of Cases To Judges Within the Courts To Which They Belong Is An Internal Matter of Judicial Administration*; ODELEYED.O. 2013. *Doctrine of Natural Justice Under Civil and Military Administration in Nigeria*, *Journal of Political Science and Law.*, 6, 231.

¹⁰⁵ SHETREET, S. ed. 2014. *Culture of Judicial Independence: Rule of Law and World Peace*. Brill Nijhoff Publishers: Leiden.

¹⁰⁶ KALEJAIYE, O. 2009. *the Press, Military Coup, and the Nigerian Polity: A Historical Perspective*. *Journal of Social Sciences*, 19, 75-81.

¹⁰⁷ *Treason and Treasonable Offences Decree No. 29 of 1993*.

¹⁰⁸ CASSEL JR, D.W. 1995. *"International Truth Commissions and Justice"*. in KRITZ, J.N., & NEIL, J. eds. *Transitional Justice. How Emerging Democracies Reckon With Former Regimes, Vol. 1. General Considerations*. United States Institute of Peace Press: Washington D.C.

treason or other offences related to rebellion against the government. This was a vague purview upon which military governments could suppress opposition. The Tribunal was not bound by the procedures or practices of military or civilian courts, but it can award any penalty prescribed by such courts, including the death penalty.¹⁰⁹ “The military government must confirm verdicts and sentences, but defendants have no right of appeal to any higher or independent court”.¹¹⁰

The denial of appeal was a gross violation of defendant’s right of appeal.¹¹¹ Despite widespread international protests, the government did not release any information about the trials until October 1995, when the government broadcasted on national television the names of forty-four defendants, the charges against them, and their sentences. Penalties under the Tribunal were harsh. Fourteen defendants were convicted of treason or conspiracy to commit treason, offences carrying the death penalty. The defendants were found to have conspired to or levied war against the Head of State to intimidate or overthrow the government. Five defendants were convicted of concealment of treason, and fourteen defendants were convicted of being accessories after the fact of treason, offences carrying mandatory life sentences.¹¹² As stated, earlier this trial fell short of due process requirements and violated the rights of the defendant as enshrined in international human rights treaties to which Nigeria had ratified, which has elaborate provisions to guarantee the rights to liberty and security of individuals as well as guaranteeing them a fair hearing and due process.¹¹³ The Human Rights Committee elaborated further in its General Comment No. 32 that: “Article 14 of the International Covenant on Civil and Political Rights is of a particularly complex nature, combining various guarantees with different scopes of application. The first sentence of paragraph 1 sets out a general guarantee of equality before courts

¹⁰⁹ Section 1 of the *Treason and Treasonable Offences Decree No. 29 of 1993*.

¹¹⁰ SMITH, R.G., HOLMES, M.N., & KAUFMANN, P. 1999. *Nigerian Advance Fee Fraud*. Australian Institute of Criminology: Canberra.

¹¹¹ ORFIELD, L. B. 2005. *Criminal Procedure From Arrest To Appeal*. the Law Book Exchange, Ltd: Clark.; CASSESE, A., GAETA, P., & JONES, R.W.D. eds. 2002. *the Rome Statute of the International Criminal Court: A Commentary, Vol. 1*. Oxford University Press: Oxford.

¹¹² CAWTHRA, C., & LUCKMAN, R. 2003. *Governing Insecurity: Democratic Control of Military and Security Establishments in Transitional Democracies*. *Scientia Militaria: South African Journal of Military Studies*, 32(1), 157-160.

¹¹³ *Articles 9, 10 and 14 of the International Covenant On Civil and Political Rights*.

and tribunals that apply regardless of the nature of proceedings before such bodies.¹¹⁴ The second sentence of the same paragraph entitles individuals to a fair and public hearing by a competent, independent and impartial tribunal established by law".¹¹⁵ The Law that is emphasised here lies in the constitutional, law enforcement and Oputa commission works of Adeyemo (2013),¹¹⁶ Guaker (2009),¹¹⁷ Ikhariale (2008),¹¹⁸ Yusuf (2007),¹¹⁹ Akhihero (2001/2002)¹²⁰ and Kukah (2011)¹²¹ as reviewed in literature previously. The defendants' trial was held in secret and conducted by a tribunal that fell short of the standards established by the principles.¹²²

In July 1995, Abacha's Provisional Ruling Council had the powers to confirm the final sentences, and amidst international criticism of the proceedings, they commuted the death sentences on fourteen defendants to life imprisonment, or twenty-five years imprisonment, and shortened many of the other sentences. Among those sentences commuted was that of General Obasanjo, whose sentence was commuted from twenty-five to fifteen years imprisonment. Serious concerns remained, however, regarding the legitimacy of the proceedings. Human rights groups investigating this, and other tribunals cited numerous concerns regarding defendants' rights in these secret military tribunals. Considered the trials "travesty of justice," critics argued that the tribunal denied defendants fundamental rights of defence, basing convictions on weak and inadmissible evidence.¹²³

¹¹⁴ TRECHSEL, S. 2005. *Human Rights in Criminal Proceedings*.

¹¹⁵ *General Comment No 32 of Article 14 of the International Covenant On Civil and Political Rights 1966*.

¹¹⁶ Op.Cit. 1-103

¹¹⁷ Op.Cit.1-51

¹¹⁸ Op.Cit. 1-4

¹¹⁹ Op.Cit. 268-286

¹²⁰ Op.Cit. 116-135

¹²¹ Op.Cit.

¹²² WEISSBRODT, D. 2002. *the Right To A Fair Trial Under the Universal Declaration of Human Rights and the International Covenant On Civil and Political Rights*. *Refugee Survey Quarterly*, 21.

¹²³ *Communication No. 1056/2002, KHACHATRIAN V. ARMENIA, Para. 6.4. 61 Communication No. 253/1987, KELLY V. JAMAICA, Para. 5.8. 62 Communications No. 1128/2002, Márques De MORAIS V. ANGOLA, Para. 5.4 and 253/1987, KELLY V. JAMAICA, Para. 5.8. 63; Elahi, M. 2002. Military Tribunals: A Travesty of Justice. Human Rights, 15-15.*

Moreover, the denial of rights contravened international human rights standards, including the African Charter on Human and People's Rights (ACHPR), the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).¹²⁴ Reports cited torture or severe mistreatment of military detainees during interrogations, violating the defendants' rights to be safeguarded from torture or ill treatment.¹²⁵ Nigeria as a party to the above international human rights instruments was obliged to comply with its provision.¹²⁶ By subjecting the defendants to the above treatments, the military government abrogated those treaties.

Detainees facing trial were detained incommunicado without access to an independent medical doctor. This form of detention is contrary to international human rights standards, as no provision existed under the State Security Detention of Persons Decree No. 2, providing for medical examination of detainees by an independent doctor, or access to detainees by any other independent person.¹²⁷ Because defendants may be detained incommunicado under the State Security Decree, without legal recourse for indefinite periods of time, political prisoners in Nigeria had no safeguards against mistreatment.¹²⁸ Indeed, the State Security Decree prohibited legal proceedings against the government for actions taken under the Decree, and forbade court action to contest any detention, which could contravene fundamental rights provisions of the constitution.¹²⁹ This is what people like Adeyemo (2013)¹³⁰, Guaker (2009)¹³¹,

¹²⁴ Nigeria Ratified the Convention Against Torture On 28/06/2001.

¹²⁵ *Convention Against Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment*. Also see Danelius, H., 2008. *Convention Against Torture and Other Cruel, Inhuman Or Degrading Treatment Or Punishment*. United Nations Audiovisual Library of International Law: New York, 1-4.

¹²⁶ BAEHR, P. 2016. *Human Rights: Universality in Practice*. Springer: London.

¹²⁷ MURRAY, R., 2008. *the African Commission's Approach To Prisons. Human Rights in African Prisons*. Human Science Research Council: Cape Town

¹²⁸ OPENSOCIETYJUSTICEINI, T. 2011. "Pre-Trial Detention and Torture: Why Pre-Trial Detainees Face the Greatest Risk". *A Global Campaign For Pre-Trial Justice Report*.

¹²⁹ Dada, J.A. 2012. *Impediments To Human Rights Protection in Nigeria*. *Ann. Surv. Int'l & Comp. L.*, 18, 67.

¹³⁰ Ibid.

¹³¹ Ibid.

and Ikhariale (2008)¹³², to mention but a few discussed in chapters one and two. Incommunicado detention of the defendants and depriving them of their rights to access the courts raised serious issues of accountability for the government, which the Oputa Commission had the mandate to address.¹³³

Despite the government's use of various decrees to insulate itself from judicial review, some high courts attempted to order the authorities to produce detainees before them, but such orders were ignored.¹³⁴ In reaction to this seeming affront to the authority of the military; the military junta amended the 1984 State Security Decree, and precluded the courts from issuing such requests, including writs of habeas corpus.¹³⁵ Even military attorneys appearing for defendants were not immune from prosecution thereby contravening the clearly articulated provisions of Article 14(3) (d) of the ICCPR. Moreover, it is unclear whether the defendants were fully informed of the substance of charges against them, their alleged actions, and in what ways these acts were unlawful, in violation of Article 9(2) of the ICCPR.¹³⁶

This article provides that any persons arrested will be informed at the time of his arrest of the reasons for the arrest and will be promptly informed of any charges against him. The military never complied with this provision in violation of the ICCPR. Therefore, this chapter attempts to bring to fore these infractions on the rights of the citizens and the need for the Oputa Commission, which was a vehicle to revisit atrocities of the ugly past and offer some form of accountability to those who were mostly affected.¹³⁷

¹³² Ibid.

¹³³ ADEAKIN, I. 2016. *the Military and Human Rights Violation in Post-1999 Nigeria: Assessing the Problems and Prospects of Effective Internal Enforcement in An Era of Insecurity*. *African Security Review*, 25(2), 129-145.

¹³⁴ LAKANMI & ANOTHER V. ATTORNEY GENERAL OF WEST & OTHERS (1969) S.C.18; OYEBODE, A. 1966. "Executive Lawlessness and the Subversion of Democracy and Rule of Law". in AJOMO ET. AL. eds. *Nigeria: Democracy and Rule of Law*, 144; OYEBODE, A. 2005. "Is the Judiciary Still the Last Hope of the Common Man?" in OYEBODE, A. 2005. *Law and Nation-Building in Nigeria (Selected Essays)*. Cepar: Lagos, 129.

¹³⁵ *State Security (Detention of Persons) (Amendment) Decree No. 14 of 1994*.

¹³⁶ BUBENZER, O. 2009. *Post-TRC Prosecutions in South Africa: Accountability For Political Crimes After the Truth and Reconciliation Commission's Amnesty Process*. Brill: Leinden.

¹³⁷ COLUMBUS, O. 2016. *Power and Good Governance: Observations From Nigeria*. Melintas, 32(1).

In addition, the defendants were not allowed sufficient time or facilities to prepare their defence.¹³⁸ The military tribunal denied defendants the right to an open trial by an independent tribunal as guaranteed under Article 14 of the ICCPR, which provides that defendants are entitled to be tried by "a competent, independent and impartial tribunal established by law".¹³⁹ Rather, because of the tribunal's interdependence with the government, particularly the military ruling organ called the Provincial Ruling Council (PRC); the military tribunal were not impartial and did not follow due process of law. The Human Rights Committee responsible for monitoring the ICCPR has stated, "Military courts should not try cases which do not refer to offences committed by members of the armed forces in the course of their duties," which was precisely what the military tribunal did. The secrecy of the proceedings prevented evaluation of the evidence used to convict the defendants.¹⁴⁰

Nigeria is a state party to the ICCPR and as such was supposed to ensure that its institutions comply with its obligations under the treaty. Under the military regimes, international human rights obligations of Nigeria were clearly ignored by the military, thereby bringing the nation to international disrepute and odium.¹⁴¹ There is no doubt that the victims of these violations deserved to tell their stories and be redressed where appropriate. The bottom line is that the government owed explanation to these victims; it had to help them come to terms with what had happened and, in that way, start the process of healing and national reconciliation.¹⁴²

The establishment of the Oputa Commission was to initiate the process of national healing by revisiting the ugly past and offering a platform for those aggrieved to vent their grievances as well as offer the alleged perpetrators the

¹³⁸ ZHANG, J. 2009. *Fair Trial Rights in ICCPR*. *Journal of Political science and Law.*, 2, 39.

¹³⁹ UDOMBANA, N.J. 2006. *the African Commission On Human and Peoples' Rights and the Development of Fair Trial Norms in Africa*. *African Human Rights Law Journal*, 6, 299-332.

¹⁴⁰ *Human Rights Committee, General Comment No. 32, Article 14: Right To Equality Before Courts and Tribunals and To A Fair Trial*, U.N. Doc. Ccpr/C/Gc/32 (2007).

¹⁴¹ GIBSON, M.R. 2008. *International Human Rights Law and the Administration of Justice Through Military Tribunals: Preserving Utility While Precluding Impunity*. *J. Int'l L & Int'l Rel.*, 4, 1.

¹⁴² ROPER, S.D., & BARRIA, L.A. 2009. *Why Do States Commission the Truth? Political Considerations in the Establishment of African Truth and Reconciliation Commissions*. *Human Rights Review*, 10(3), 373-391.

opportunity to offer recompense to victims who had suffered hardship as a direct result of their actions or policies.¹⁴³

An evaluation of the tribunal's proceedings from a human rights perspective shows that in almost every case, the evidence used in convicting the defendants was deficient.¹⁴⁴ A free and unprejudiced court would without doubt have rejected the evidence used in convicting the defendants, since they were obtained from defendants who were held in long-term incommunicado detention.

The circumstances of their incarceration could not have shielded them from ill treatment or torture by their captors. The defendants before the Tribunal were also denied the right of appeal, contrary to Article 14(5) of the ICCPR. Therefore, the problematic nature of the procedures adopted by the Military Tribunal provoked condemnation as it denied defendants their right to due process and other fundamental human rights,¹⁴⁵ a notion emphasised by Falola, T. et al. (1991).¹⁴⁶

The accountability process that Nigeria undertook was supposed to focus on the victims of injustice and human rights violation and hold the perpetrators accountable.¹⁴⁷ This was supposed to be the focuses of the Oputa Commission. It is however arguable as to whether this important mandate of the Commission was achieved.¹⁴⁸ The next chapter discusses how the Commission addressed its mandate and the readers will have the liberty to reach their own conclusions as to what extent the Commission achieved the mandate for which it was established.

In conclusion, examined is how the military administration used military tribunals and secret trials to violate the human rights of Nigerians who were

¹⁴³ OLSEN, T.D., PAYNE, L.A., REITER, A.G., & WIEBELHAUS-BRAHM, E. 2010. *When Truth Commissions Improve Human Rights*. *International Journal of Transitional Justice*, 4(3), 457-476.

¹⁴⁴ BIRNBAUM, M., 1995. *Nigeria, Fundamental Rights Denied: Report of the Trial of Ken Saro-Wiwa and Others*, Vol. 2210, Article 19.

¹⁴⁵ SMITH, R. S. 1988. *Kingdom of the Yoruba*. University of Wisconsin Press: Madison.

¹⁴⁶ Ibid.

¹⁴⁷ YUSUF, H.O. 2013. *"Chequered Accounts: Truth, Justice and the Judiciary in Post Authoritarian Nigeria"*. in Czarnota, A., & Parmentier, S. eds. *Transitional Justice and Rule of Law: Institutional Design and the Changing Normative Structure of Post-Authoritarian Societies*. Intersentia Publishers: Cambridge/Antwerp/ Portland.

¹⁴⁸ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286.

subjected to the process.¹⁴⁹ It was clearly evident that the procedure adopted by the tribunals did not meet the minimum standards of due process and a fair hearing as articulated in international human rights law.¹⁵⁰ The direct conflict between the procedures at the tribunals and human rights principles and standards at stake were part of the subject of enquiry by the Oputa Commission.

It is important to note that during the proceedings of the Oputa Commission, attempts were made to compel Generals Muhammadu Buhari, Ibrahim Babangida and Abdul Salam Abubakar to attend and give their account of their human rights record as military rulers, but the Generals rebuffed the Commission and ironically used the same rule of law and judiciary that their regimes undermined to shield themselves from accountability.¹⁵¹ It was noted therefore, by Yusuf (2007) in the preceding chapters”,¹⁵² that the many setbacks suffered by the Oputa Commission were because of bureaucratic red-tape while Akhiero on his own questioned the constitutionality and powers of the Commission. Resolving the case in favour of the Generals, the Supreme Court in its ruling held that the Oputa Commission had no powers to compel the appearance of any witness outside the Federal Capital Territory and that the 1999 Constitution made no provisions for tribunals of inquiry.¹⁵³ In essence, the ruling by the Supreme Court shielded the Generals from accountability.¹⁵⁴

3.2.3 Security forces: extrajudicial killing, arbitrary arrests and detentions

The right to life is a fundamental human right and the basis for the enjoyment of other human rights.¹⁵⁵ This right is enshrined in the constitution and

¹⁴⁹ ODELEYE, D.O. 2013. *Doctrine of Natural Justice Under Civil and Military Administration in Nigeria, Journal of Political Science and Law.*, 6,231.

¹⁵⁰ KÄLIN, W., & KÜNZLI, J. 2009. *the Law of International Human Rights Protection*. Oxford University Press: Oxford

¹⁵¹ OMO-BARE, I. 2009. *the democratic Transition in Nigeria*. Collegeboard.com, Inc: New York

¹⁵² Ibid.

¹⁵³ CHIEF FAWEHINMI GANI & OTHERS V. GENERAL IBRAHIM BABANGIDA (RTD.) & OTHERS. *Citation: 2003) Lpelr-Sc.360/2001*.

¹⁵⁴ DIKE, V.E. 2005. *Corruption in Nigeria: A New Paradigm For Effective Control*. *Africa Economic Analysis*, 24(08), 1-22.

¹⁵⁵ WICKS, E. 2010. *the Right To Life and Conflicting Interests*. Oxford University Press: Oxford.

other international human rights treaties.¹⁵⁶ The military regimes, especially those under the Abacha junta, were singularly notorious in their disregard for human rights; they ignored the sanctity of life with reckless abandon and departed from the state obligation to protect the right to life.¹⁵⁷ The Abacha regime targeted human rights and pro-democracy activists and murdered them to silence any form of dissent and to maintain hegemony.¹⁵⁸ The period under review witnessed many reports of unlawful and extra-judicial killing attributed to bands of roving state security operatives. The regime did not properly investigate these murders and did not bring any of these operatives to trial, despite reasonable suspicion of their complicities to these crimes.¹⁵⁹

This subsection will elaborate that unlawful killing amounted to gross violation of human rights for which there must be accountability for Nigeria to exorcise the ghosts of the evil past and move forward as a nation, operating under rule of law and due process. As the thrust of the thesis is on accountability for past human rights violations, there is no way we can carry out a holistic discourse without reviewing the violation of the right to life by the military. It is equally important to link this violation to arbitrary arrest and detention. Most victims of unlawful killing by the Abacha junta were at first arbitrarily or unlawfully arrested and detained. It is often while they are in detention, incommunicado, that their right to life is violated.¹⁶⁰ Such human rights violations are documented in A CLO Report on the State of Human Rights in Nigeria,¹⁶¹ as seen in the previous sections.

Under General Abacha's regime, the government enforced its authority through the Federal Security System, which included the military, the State Security Service (SSS), the Nigerian Police Force (NPF), and other regulatory and law enforcement agencies, as well as through non-governmental security forces.

¹⁵⁶ Section 33(1) of the 1999 Constitution of the Federal Republic of Nigeria; Article 6 of the International Convention On Civil and Political Rights; Article 4 of the African Charter On Human and People's Rights.

¹⁵⁷ DADA, J.A. 2013. *Judicial Remedies For Human Rights Violation in Nigeria: A Critical Appraisal*. *Journal of Law, Policy and Globalization*, 10, 1-18.

¹⁵⁸ LEBEAU, Y. 2013. *Nigeria During the Abacha Years, 1993-1998*, *Op.Cit.*

¹⁵⁹ IBAGERE, E. 2001. *Democracy and Nigeria Journalism of the 90s*. the Nigerian Academic Forum Vol. 1 No. 4 November.

¹⁶⁰ MAIGARI, B.S. 2013. *Promotion of the Right To Dignity of Person: the Need For Criminalization of Torture in Nigeria*. LLM Long Thesis. Central European University.

¹⁶¹ Ibid.

The security forces often abused this power and were unchecked by the courts, as they regularly disregarded court orders to arraign or release detainees.¹⁶² This clearly shows that the security forces did not operate within the law and disregarded the human rights to liberty and security of persons to which the Nigerian State has an obligation to guarantee and protect.¹⁶³

Abuse by the security forces was able to continue throughout military regimes because of the military's insulation from legitimate governmental control and judicial restraint.¹⁶⁴ For instance, security forces commonly used extrajudicial means to maintain control and order under the military regime, the use of excessive force to suppress challengers or dissent and to purportedly combat crime in the oil rich Niger Delta region.¹⁶⁵ Death or injury to a number of innocent civilians occurred as a result, thereby contributing to the culture of fear and oppression upon which the military maintained power. The government neither acknowledged nor denied the abuses committed by the security forces. Notably though is the fact that the government seldom held security forces accountable for the death of individuals in their custody, or for their use of excessive force, encouraging a climate of impunity in which this abuse flourished.¹⁶⁶

As a dictatorship the Abacha regime did not tolerate dissent and regularly took action to silence critics of the government and revelations about government practice.¹⁶⁷ These included human rights monitors, journalists, and political opponents who were routinely detained in violation of the right to freedom of expression and opinion, which is guaranteed under international human rights

¹⁶² ADEJUMOBI, S., 2010. *Democracy and Governance in Nigeria: Between Consolidation and Reversal*. in *Governance and Politics in Post-Military Nigeria (1-21)*. Palgrave Macmillan: New York.

¹⁶³ *Article 3 of the Universal Declaration of Human Rights, Article 9 of the International Covenant On Civil and Political Rights and Article 6 of the African Charter On Human and People's Rights.*

¹⁶⁴ HOLZER, B. 2007. *Framing the Corporation: Royal Dutch/Shell and Human Rights Woes in Nigeria*. *Journal of Consumer Policy*, 30(3), 281-301.

¹⁶⁵ OMOTOLA, J.S. 2009. *Dissent and State Excesses in the Niger Delta, Nigeria*. *Studies in Conflict & Terrorism*, 32(2)129-145.

¹⁶⁶ GOULD, M. 2011. *the Struggle For Modern Nigeria: the Biafran War, 1967-1970*. I.B. Tauris: London.

¹⁶⁷ DIAMOND, L.J., KIRK-GREENE, A.H.M. AND OYEDIRAN, O. eds., 1997. *Transition Without End: Nigerian Politics and Civil Society Under Babangida*. Lynne Rienner: Colorado. 1-27.

law.¹⁶⁸ Because of the above violations, it's important to understand the reasons as to why information like that in The Human Rights Violation Investigation Commission Report (May 2002),¹⁶⁹ and Shriver (1995),¹⁷⁰ An Ethic for Enemies: Forgiveness in Politics are of great importance to this chapter since they examine cogent but related themes, particularly on human rights violation and the Oputa Commission.

It is important to point out here that the suspension of the constitutional rights negated any protection of freedom of speech. While the Abacha regime frequently claimed that it supports freedom of speech, however in reality it did not. Other methods of oppression included intimidation of advertisers, surveillance of and interference with printers, and seizure of newspapers from vendors.¹⁷¹ The assault of the Abacha regime on basic human rights was but regrettable. The wanton disregard for rule of law and abuse of due process under this regime thus, clearly showed how the country had degenerated under General Abacha's watch.¹⁷²

There is no doubt that after this dark past the country needed to go through a process of truth and reconciliation to exorcise the ghosts of the past.¹⁷³ In this regard an important remit of the work of the Oputa Commission was to consider cases of arbitrary and prolonged incommunicado detention and extrajudicial executions committed by security forces of the military government.¹⁷⁴

The Oputa Commission offered the victims of abuse a platform to tell the story of their suffering to millions of Nigerians.¹⁷⁵ The telling of these stories at

¹⁶⁸ OLOYEDE, B., 2004. *the Press Under Military Rule in Nigeria, 1966-1993: An Historical and Legal Narrative* (No. 73). Edwin Mellen Press: Lewinston.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ OJO, E.O. 2003. *the Mass Media and the Challenges of Sustainable democratic Values in Nigeria: Possibilities and Limitations*. *Media, Culture & Society*, 25(6), 821-840.

¹⁷² KOONINGS, K., & KRUIJT, D. 2002. *Political Armies: the Military and Nation Building in the Age of Democracy*. Zed Books: London.

¹⁷³ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286.

¹⁷⁴ NWOGU, N.V. 2007. *Shaping Truth, Reshaping Justice: Sectarian Politics and the Nigerian Truth Commission*. Lexington Books: Lanham.

¹⁷⁵ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen.

least had some therapeutic effect for victims.¹⁷⁶ It is therefore important to note that use of state machinery against civilians is detrimental to the human rights regime in any state. A situation whereby the powers of the courts can intervene on behalf of the citizen is taken away or abridged spells doom for human rights and rule of law.¹⁷⁷ It should never be allowed to happen under any circumstances. The next section portrays how the military government exploited the resources of minorities in the Niger Delta region.

3.2.4 Oil and human rights violation

To say that Nigeria is a country rich in oil wealth is to state the obvious.¹⁷⁸ However, successive regimes have depleted the nation's resources, and through greed, mismanagement and corruption on the part of the political elite, the nation's people have seen little benefit from the mining of the nation's oil. Instead of a positive transformation towards prosperity, oil exploitation has enriched a small minority, leaving the vast majority of the population impoverished.¹⁷⁹ This exploitation has been the source of tension between the Nigerian people (particularly in the Niger Delta, the main source of the nation's oil reserves), oil companies, and the government, the latter of which has often collaborated in corruption and human rights violation.¹⁸⁰ Multinational oil companies operating in Nigeria face complex difficulties in their relationships with both the Nigerian government and the communities in which they operate.¹⁸¹ "Successive

¹⁷⁶ BICKFORD, L., 2007. *Unofficial Truth Projects. Human Rights Quarterly*, 994-1035. DALY, E. AND SARKIN, J., 2011. *Reconciliation in Divided Societies: Finding Common Ground*. University of Pennsylvania Press: Philadelphia.

¹⁷⁷ OKO, O. 2005. *Seeking Justice in Transitional Societies: An Analysis of the Problems and Failures of the Judiciary in Nigeria. Brook. J. Int'l L.*, 31, 9.

¹⁷⁸ SALA-I-MARTIN, X., & SUBRAMANIAN, A. 2008. "Addressing the Natural Resource Curse: An Illustration From Nigeria". in *Economic Policy Options For A Prosperous Nigeria* (61-92). Palgrave Macmillan: London.

¹⁷⁹ IDEMUDIA, U. 2012. *the Resource Curse and the decentralization of Oil Revenue: the Case of Nigeria. Journal of Cleaner Production*, 35, 183-193; BOND, P., & SHARIFE, K., 2009. *Shell Oil: Guilty in World Court of Public Opinion, Economic and Political Weekly*, 21-23.

¹⁸⁰ FRYNAS, J.G. 2000. *Oil in Nigeria: Conflict and Litigation Between Oil Companies and Village Communities, Vol. 1. Lit Verlagmünster*. [SI]

¹⁸¹ OKONTA, I., & DOUGLAS, O. 2003. *Where Vultures Feast: Shell, Human Rights, and Oil in the Niger Delta*. Sierra Club: New York.

governments have squandered the oil wealth which the oil companies have helped to unlock, salting it away in foreign bank accounts rather than investing it in education, health and other social infrastructure and mismanaging the nation's economy to the point of collapse".¹⁸² Without a means to address community grievances in a meaningful way, protesters have resorted to incidents of hostage taking, forced closures of flow stations, sabotage, and threatening and intimidating the staff at oil companies".¹⁸³ This section, will briefly review human rights violation that occurred as a consequence of the activities of the Nigerian government and multinational oil corporations, notably Shell, exploring and mining oil in the Niger Delta Region.¹⁸⁴

It is important to note that any discussion of human rights violation in Nigeria would be incomplete without mentioning the Niger Delta region, the epicentre of oil exploration activities in Nigeria and the battleground of conflict between the Nigerian security forces with the support of multinational oil corporations and minority ethnic groups.¹⁸⁵ The most notable human rights violation that attracted international attention occurred after the Movement for the Survival of the Ogoni People (MOSOP), led by writer and activist Ken Saro-Wiwa, who mobilised 300,000 people in a peaceful protest for environmental and social justice.¹⁸⁶ Shell's response was to encourage and assist the Nigerian military in crimes against humanity and gross human rights violation.¹⁸⁷ On 10 November 1995, the Nigerian military government hanged Saro-Wiwa and eight other Ogoni activists after a flawed trial that was condemned as "judicial murder".¹⁸⁸

¹⁸² OMEJE, K., 2005. *Oil Conflict in Nigeria: Contending Issues and Perspectives of the Local Niger Delta People*. *New Political Economy*, 10(3), 321-334.

¹⁸³ OMEJE, K. 2005. *Oil Conflict in Nigeria: Contending Issues and Perspectives of the Local Niger Delta People*. *New Political Economy*, 10(3)321-334.

¹⁸⁴ WATTS, M. 2004. *Resource Curse? Governmentality, Oil and Power in the Niger Delta, Nigeria*. *Geopolitics*, 9(1), 50-80.

¹⁸⁵ OMOFONMWAN, S.I., & ODIA, L.O. 2009. *Oil Exploitation and Conflict in the Niger-Delta Region of Nigeria*. *Journal of Human Ecology*, 26(1) 25-30.

¹⁸⁶ OSHA, S. 2006. *Birth of the Ogoni Protest Movement*. *Journal of Asian and African Studies*, 41(1-2), 13-38.

¹⁸⁷ FORLARIN, S. 2007. *Niger Delta: Environment, Ogoni Crisis and the State. the Constitution*, 7(1), 37-61.

¹⁸⁸ DAMINABO, A.O. 2005. *Ken Saro-Wiwa, 1941-1995: His Life & Legacies*. Hanging Gardens Publishers; ROWELL, A., MARRIOTT, J., & STOCKMAN, L. 2005. *the Next Gulf*. Constable: London, 105.

The hanging of Saro-Wiwa and his kinsmen attracted international opprobrium and sanctions.¹⁸⁹ The concomitant effect of the abuse committed by the Nigerian State with acquiescence or tacit support from the multinational oil corporations as well as other acts of gross violation of human rights against pro-democracy, human rights and other civil society activists seriously tarnished the image of Nigeria and lowered its standing in the comity of nations.¹⁹⁰

The relationship between government on the one hand and civil society, pro-democracy and human rights activists including minority communities on the other was at its lowest ebb at the time the Obasanjo government took over in 1999.¹⁹¹ Therefore, the creation of the Oputa Commission was necessary to assuage the feelings of those aggrieved, especially from the oil producing communities. The government recognised what the victims had been through at the hands of successive regimes, which neglected and impoverished the proverbial 'goose that laid the golden egg' (i.e. oil).¹⁹² The fact that various minority groups in Nigeria, who felt most aggrieved and short changed by the Nigerian nation had the opportunity to vent their grievances before a Commission set up by the government to listen to their stories, could be said to have had a cathartic effect on these people.¹⁹³ For them it was important that their story was heard and etched in the history books for future generations.¹⁹⁴ Therefore, to give voice to the voiceless minorities was one of the important foci of the Oputa Commission.¹⁹⁵

Even though the multinational oil companies faced difficult challenges in the region, they too have shared responsibility for human rights violations in the

¹⁸⁹ ROWELL, A., MARRIOTT, J., & STOCKMAN, L. 2005. *the Next Gulf*, Op.Cit.

¹⁹⁰ WETTSTEIN, F. 2012. *Silence As Complicity: Elements of A Corporateduty To Speak Out Against the Violation of Human Rights. Business Ethics Quarterly*, 22(01), 37-61.

¹⁹¹ EHWARIEME, W., 2011. *the Military Factor in Nigeria's Democratic Stability, 1999-2009. Armed Forces & Society*, 37(3), 494-511.

¹⁹² IKELEGBE, A. 2005. *the Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria. Nordic Journal of African Studies*, 14(2), 208-234.

¹⁹³ HAYNER, P.B., 2006. *Truth Commissions: A Schematic Overview. International Review of the Red Cross*, 88(862), 295-310.

¹⁹⁴ HACKETT, C., & ROLSTON, B. 2009. *the Burden of Memory: Victims, Storytelling and Resistance in Northern Ireland. Memory Studies*, 2(3), 355-376.

¹⁹⁵ ALBERT, I.O., 2007. *Nigeria's Truth and Reconciliation Commission and the Crisis of Its Interpretation. Local Approaches To Conflict Transformation*, Cepacs, University of Ibadan: Ibadan. 119-131.

Niger Delta.¹⁹⁶ The double standards exhibited by oil companies in turning a blind eye to wanton abuse and disregard for the rights of the people was most unfortunate. It is instructive that multinational companies that were supposed to be adept at best practice, operating in an environment devoid of human rights violation supported and subsidised some of the rogue security forces. These actions unleashed mayhem on the communities to silence them from making legitimate demands for oil companies to respect the environment and operate in accordance with international standards.¹⁹⁷

It is regrettable that these multinational companies had different standards for their home countries and for their host countries.¹⁹⁸ The international community was also complicit because they did not sanction these companies for their involvement in human rights violations committed with their support and or acquiescence.¹⁹⁹ The governments that host oil companies operating in Nigeria should have maintained pressure on the Nigerian government to respect rule of law and good governance as well as monitor their company's compliance with international human rights standards.²⁰⁰ Further, they should have taken steps to ensure compliance with the binding code of conduct for multinational oil companies in line with international standards in other civilised climes. Their failure and/ or neglect for due diligence make them as complicit as the oil companies in relation to the atrocities that occurred in the Niger Delta.²⁰¹ This piece of work was analysed perfectly by Adeyemo (2013).²⁰²

¹⁹⁶ FRYNAS, J.G. 2005. *the Falsedevelopmental Promise of Corporate Social Responsibility: Evidence From Multinational Oil Companies*. *International Affairs*, 81(3).581-598.

¹⁹⁷ HOLZER, B. 2007. *Framing the Corporation: Royal Dutch/Shell and Human Rights Woes in Nigeria*. *Journal of Consumer Policy*, 30(3), 281-301.

¹⁹⁸ OLUDURO, O.F. 2015. *Oil Exploitation and Compliance With International Environmental Standards: the Case of Double Standards in the Niger Delta of Nigeria*. *Journal of Law, Policy and Globalisation*, 37, 67-82.

¹⁹⁹ ZERK, J. 2013. *"Corporate Liability For Gross Human Rights Abuse: Towards A Fairer and More Effective System of Domestic Law Remedies"*. *Report Prepared For OHCHR*.103.

²⁰⁰ RUGGIE, J.G. 2007. *Business and Human Rights: the Evolving International Agenda*. *the American Journal of International Law*, 101(4) 819-840.

²⁰¹ UNITED NATIONS. 2010. *Guidance On Responsible Business in Conflict-Affected and High-Risk Areas: A Resource For Companies and Investors*. *UN Global Compact Reports*, 2(1)1-48.

²⁰² Op.Cit. 1-103.

Another concern was the problematic level of secrecy surrounding the arrangements for security for the oil companies. “Given the abuse that has allegedly been committed by the Nigerian security forces in protecting oil installations; it is more important that there be transparency by the oil companies to monitor security forces’ performance related to their operations, take steps to prevent future abuse, and publicly protest violations that do occur”.²⁰³ This lack of transparency made abuse possible and lack of accountability the order of the day, thereby promoting impunity for violators.

Thus, the oil companies' relationship with the government, coupled with their economic interdependence, created an opportunity for companies to influence government policy and negatively influence their protection of human rights.²⁰⁴ Yet, companies continually sidestepped this responsibility, and in some cases have escaped accountability for their role in human rights infractions. Most oil companies failed to criticise security force abuse related to their operations, and if they did respond, they often denied knowledge of government attacks on individuals, or justified security measures as appropriate responses to threats against company security.²⁰⁵ This attitude gave the impression of tacit support for abuse by security forces and helped promote impunity.²⁰⁶

Communities have responded to inequities attributed to the oil economy through attempts to mobilise and protest the exploitation of oil, provoking violent and repressive response by government.²⁰⁷ Investigations connected to the suppression of protests at oil companies have revealed numerous human rights violation, including: “repeated incidents in which people were brutalised for

²⁰³ WETTSTEIN, F. 2010. *theduty To Protect: Corporate Complicity, Political Responsibility, and Human Rights Advocacy*. *Journal of Business Ethics*, 96(1).33-47.

²⁰⁴ KAEB, C. 2007. *Emerging Issues of Human Rights Responsibility in the Extractive and Manufacturing Industries: Patterns and Liability Risks*. *Northwestern Journal of Human Rights*., 6,327.

²⁰⁵ OBI, C. 2009. *Nigeria’s Niger Delta: Understanding the Complex Drivers of Violent Oil-Related Conflict*. *Africa Development*, 34(2); ONUOHA, F.C. 2009. *Why the Poor Pay With Their Lives: Oil Pipeline Vandalisation, Fires and Human Security in Nigeria*. *Disasters*, 33(3), 369-389.

²⁰⁶ WETTSTEIN, F. 2012. *Silence As Complicity: Elements of A Corporateduty To Speak Out Against the Violation of Human Rights*. *Business Ethics Quarterly*, 22(01) 37-61.

²⁰⁷ IKELEGBE, A. 2005. *the Economy of Conflict in the Oil Rich Niger Delta Region of Nigeria*. *Nordic Journal of African Studies*, 14(2) 208-234.

attempting to raise grievances with the companies; and in some cases security forces threatened, beat, and jailed members of community delegations even before they presented their cases".²⁰⁸ Many local people seemed to be the object of repression simply by suggesting a compensation agreement, or for seeking effective compensation for land ruined or livelihood lost.²⁰⁹ These were some of the grievances the community members had against the oil companies and rightly, they were aggrieved at the shortcomings of oil companies in failing to play a more altruistic role in addressing legitimate community grievances and angst.²¹⁰

Although General Abacha's death in 1998 significantly relaxed the unprecedented repression of his regime, tension remains in oil producing communities, and human rights violations continues.²¹¹

Restiveness in the Niger Delta continued even after the democratic government of President Obasanjo was inaugurated. The new government continued with the repressive tactics of the military, as evidenced in the Odi Massacre in 1999.²¹² The massacre was an attack carried out on November 20, 1999 by the Nigerian military on the town of Odi in Bayelsa State in retaliation for the alleged killing of twelve members of the Nigerian Police Force (NPF) by a gang near Odi sometime in November 1999.

In the attack the military destroyed all the buildings in the town except the bank, the Anglican Church and the health centre.²¹³ A number of civilians were also reportedly killed in the incident. Human Rights Watch concluded that "the soldiers must certainly have killed tens of unarmed civilians and that figures of several

²⁰⁸ OMOTOLA, J.S. 2009. *Dissent and State Excesses in the Niger Delta, Nigeria. Studies in Conflict & Terrorism*, 32(2), 129-145.

²⁰⁹ WATTS, M.J., & IBABA, I.S. 2011. *Turbulent Oil: Conflict and Insecurity in the Niger Delta. African Security*, 4(1)1-19.

²¹⁰ IDEMUDIA, U., & ITE, U.E. 2006. *Corporate–Community Relations in Nigeria's Oil Industry: Challenges and Imperatives. Corporate Social Responsibility and Environmental Management*, 13(4) 194-206.

²¹¹ COURSON, E. 2011. *Mend: Political Marginalization, Repression, and Petro-Insurgency in the Niger Delta. African Security*, 4(1).20-43.

²¹² AGHALINO, S.O., 2009. *the Olusegun Obasanjo Administration and the Niger Delta Question, 1999-2007. Studies of Tribes and Tribals*, 7(1), 57-66.

²¹³ ADEAKIN, I., 2016. *the Military and Human Rights Violation Human Rights Violation in Post-1999 Nigeria: Assessing the Problems and Prospects of Effective Internal Enforcement in An Era of Insecurity. African Security Review*, 25(2)129-145; Ojakorotu, V. and Okeke-Uzodike, U., 2006. *Oil, Arms Proliferation and Conflict in the Niger Delta of Nigeria. African . Journal On Conflict Resolution*, 6(2), 85-106.

hundred dead are entirely plausible".²¹⁴ Nnimmo Bassey, Executive Director of Environmental Rights Action, claims that nearly 2500 civilians were killed.²¹⁵

These assertions were validated in February 2013, when the Federal High Court ordered the Federal Government to pay N37.6 billion compensation to the people of Odi for the massacre and destruction of their ancestral home. In his judgment, Justice Lambo Akanbi condemned the government for "brazen violation of the fundamental human rights of the victims to movement, life and to own property and live peacefully in their ancestral home".²¹⁶ The judgment by the court vindicates the truth of the abuse and the fact that government, which was supposed to protect the human rights of its citizens, was the real perpetrator in this case.

It was evident that this massacre took place under the watch of President Obasanjo, who had established the Oputa Commission to investigate past human rights violation. Thus, it raised questions about the credibility of Obasanjo's government in addressing past human rights violation.

Over two hundred civilians of the Tiv ethnic group in Gbagi, Zaki-Biam and several other villages were allegedly killed by the Nigeria army.²¹⁷ The soldiers also allegedly engaged in widespread destruction of homes and properties in these areas.²¹⁸ Reportedly the soldiers carried out these dastardly acts in revenge for the earlier killings of nineteen soldiers by a Tiv militia group. Sadly, President Obasanjo and senior government and military officials defended the soldiers' actions, claiming they acted in self-defence.²¹⁹ This was another dent in the human rights record of Obasanjo's presidency.

²¹⁴ ALBERT, I.O., 2003. *the Odi Massacre of 1999 in the Context of the Graffiti Left By the Invading Nigerian Army (No. 1). Programme On Ethnic and Federal Studies (Pefs), Department of Political Science, University of Ibadan: Ibadan.* (<https://www.hrw.org/legacy/press/1999/Dec/Nibq1299.Htm>). Retrieved 10 January 2017.

²¹⁵ BASSEY, N., (2006-06-02). "Trade and Human Rights in the Niger Delta of Nigeria" *Pambazuka News. Fahamu*. Retrieved 19 August 2015.

²¹⁶ "Odi Invasion: Court Orders Fg To Pay N37.6bn Compensation", *Vanguard Newspaper*, February 19, 2013.

²¹⁷ OMEJE, K. 2005. *Oil Conflict in Nigeria: Contending Issues and Perspectives of the Local Niger Delta People*. *New Political Economy*, 10(3).321-334.

²¹⁸ OJO, E.O. 2009. *New Missions and Roles of the Military Forces: the Blurring of Military and Police Roles in Nigeria*. *Journal of Military and Strategic Studies*, 11, 1-2.

²¹⁹ *Human Rights Watch World Report (2003) Africa: Nigeria*. New York Human Rights Watch.

The government did not make any attempt to set up an independent investigation into these killings. The alleged perpetrators were also not held to account. Of concern is that the government was quick to defend attacks by its soldiers on citizens under the guise of self-defence.

Accountability was at the core of the mandate of the Oputa Commission and for a government, which set up such a commission to be, accused of such gross violations is telling and disturbing. A government that is genuinely interested in accountability and dealing with the past will take such accusations seriously and conduct a proper and genuine investigation into this accusation and, importantly, hold alleged perpetrators to account.²²⁰ Obasanjo's presidency was not genuinely interested in accountability and dealing with the past, and this raised questions to its credibility to uphold human rights and to hold violators accountable.²²¹

3.2.5 Right to liberty and security of the person

The right to liberty and security of the person is guaranteed by the Nigerian Constitution as well other United Nations and regional instruments Nigeria had ratified.²²² However, during the period of military rule this right was completely disregarded, as unlawful arrest and detention became the hallmark of military rule in Nigeria.²²³ Military decrees often empower the state and its security agencies to detain citizens without trial in violation of their fundamental human rights.²²⁴

Available At: <https://www.hrw.org/legacy/wr2k3/Africa8.html> (Accessed On 23/10/2017).

²²⁰ JIBO, M. (2001). *the 2001 Tiv Massacre: Accountability and Impunity in Nigeria's Fourth Republic*. *University of Jos Journal of Political Science* 2 (3): 1-13.

²²¹ AKA, P.C., 2003. *Nigeria Since May 1999: Understanding the Paradox of Civil Rule and Human Rights Violations Under President Olusegun Obasanjo*. *San Diego Int'l LJ*, 4,209.

²²² Section 35 of the Constitution of the Federal Republic of Nigeria 1999, Article 9 (1) of the International Convention On Civil and Political Rights, Article 6 of the African Charter On Human and Peoples Rights.

²²³ MBAH, P. AND NWANGWU, C., 2014. *the Counter-Insurgency Operations of the Joint Task Force and Human Rights Abuses in Northern Nigeria, 2011– 2013*. *Journal of Educational and Social Research*, 4(5)67.

²²⁴ DADA, J.A., 2012. *Impediments To Human Rights Protection in Nigeria*. *Annual Survey of International & Comparative Law.*, 18, .67.

Most of those who were administratively detained by security officials were detained under Decree No. 2 of 1984 as amended.²²⁵ This procedure was an affront to human rights because it sidestepped the courts and allowed certain officials of the military government powers to detain individuals at their whim and without recourse to the law courts.²²⁶ This was a discretion that was not exercised judicially and which courts were not allowed to examine. Administrative detention laws are those, which authorise:

“The deprivation of a person’s liberty whether by the order of the Head of State or any executive authority, civil or military. For the purposes of safeguarding national security or public order, or other similar purposes without that person being charged or brought to trial”.²²⁷

The deprivation of liberty through administrative detention sometimes violates series of protective measures developed by international human rights law to ensure that individuals are not arbitrarily or unlawfully deprived of their liberty.²²⁸ It places the individual in custody of the state, even though the person has not been charged or tried in a court of law. The individual is detained merely as a precautionary measure based on a presumption that he poses a threat to the national security or economic wellbeing of the country.

According to Femi Falana, a prominent Nigerian human rights lawyer, administrative detention was used during the military regime of General Obasanjo from 1976 to 1979 more so than in previous regimes.²²⁹ It was during this period that the secret detention camp known as “Ita Oko” was established on an island off the Nigerian coast. The island held detainees in destitute conditions until it was

²²⁵ HALL, P. 2009. *Think Imperially: the Private Press Mediation of State Policy and the Global Economy Within Colonial and Postcolonial Nigeria*. *Journal of African Media Studies*, 1(2) 247-262.

²²⁶ MACKEN, C., 2005. *Preventive detention and the Right of Personal Liberty and Security Under the International Covenant On Civil and Political Rights, 1966*. *Adelaide Law Review*, 26, 1.

²²⁷ INTERNATIONAL COMMISSION OF JURISTS (ICJ) *Submission To the Working Group On Arbitrary Detention “the definition and Scope of Arbitrary Deprivation of Liberty in Customary International Law”*. Submitted February 2012.

²²⁸ MACKEN, C. 2005. *Preventive Detention*, Op.Cit.

²²⁹ FALANA, F. 1989. *Origin and History of Detention Law in Nigeria*. A Paper Presented At the Nigeria Bar Association Conference, September 1. 6.

exposed by the Civil Liberties Organisation (CLO) in the late 1980s and was eventually closed by the government.²³⁰ This revelation by Femi Falana gives a picture of human rights antecedents of President Obasanjo and supports his critics' contentions that questioned his integrity in setting up the Oputa Commission. Some critics insisted he wanted to use the Commission to rubbish other leaders while his own human rights records were equally despicable.²³¹ These contentions may be credible, taking into consideration the fact that President Obasanjo did not do enough to make the Oputa Commission succeed.²³²

During the first wave of military rule due process of law was to an extent available. The remedy of habeas corpus was available and persons who were detained could challenge the lawfulness of their detention in court. Many courts ordered the release of detainees on procedural and due process grounds. The military regime was to contain this seemingly judicial activism by the courts through the introduction of "ouster clauses" which became the tool to prevent judicial scrutiny.²³³ The military government was to become more blatant as they were later to disobey court orders outright that were against the military government.²³⁴ According to Femi Falana, of the twenty-three detainees whose release was ordered by the courts during the military regime of General Obasanjo, only five were actually released.²³⁵ The flagrant disobedience of the court order is an affront to rule of law, the constitution and human rights, and negated the earlier pretensions of the military as an institution that respected due process and rule of law. As will be revealed later in this section, the military extended its

²³⁰ Civil Liberties Organization (CLO) Was the Pioneer Nigerian Human Rights Organisation Established in 1987.

²³¹ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria. the International Journal of Transitional Justice*, 1(2), 268-286.

²³² AJAYI, A.I. 2013. *Subordinating the Military To Civilian Control in Nigeria Since 1999: 'Enabling Factors, Strategies and Prospects of Sustainability. European Journal of Humanities and Social Sciences*, Vol. 25(1).

²³³ SAMBO, A.O., & ABDULKADIR, A.B. 2012. *Ouster Clauses, Judicial Review and Good Governance: An Expository Study of the Experience in Nigeria and Malaysia. Oida International Journal of Sustainable Development*, 5(09), 95-108.

²³⁴ SAMBO, A.O., & ABDULKADIR, A.B. 2012. *Ouster Clauses, Judicial Review and Good Governance: An Expository Study of the Experience in Nigeria and Malaysia. Oida International Journal of Sustainable Development*, 5(09), 95-108.

²³⁵ FALANA, F. 1989. *Origin and History of Detention Law in Nigeria. A Paper Presented At the Nigeria Bar Association Conference, September 1, 6.*

arrogance to the promulgation of ouster clauses that banned the courts from questioning or inquiring into any action of the military government including those clauses that interfered with human rights.

The military government ousted the jurisdiction of the courts to entertain complaints in respect of Decree No. 24 of 1967 and in fact any other Decree by the combined effect of the Constitution (Suspension and Modification) Decree No. 1 of 1967²³⁶ and the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970.²³⁷ The interference of the military regime into the realm of judicial affairs of the nation was another legacy of the military in Nigeria.²³⁸ Hitherto the judiciary was seen as the last hope for ordinary Nigerians. It provided a forum where individuals could seek redress in cases of rights violation. Therefore, the concomitant effects of the above decrees were to effectively deny Nigerians the last legal avenue where they could seek redress. The military had become a law unto themselves and instead of serving Nigerians, they served themselves. The conduct of the military in government left much to be desired by the time the military were removed from governance in Nigeria. The country's reputation was at its lowest ebb and according to one commentator, the will to continue ruling was gone, as the country became ungovernable.²³⁹

The Oputa Commission was awash with testimonies of victims of brutality by the security forces. The violation not only affected high profile activists but also ordinary Nigerians who were subjected to ill treatment, as the security forces

²³⁶ Section 26 Provides that: No Question As To the Validity of This Or Any Other Decree Or Edict Will Be Entertained By Any Court of Law in Nigeria.

²³⁷ the decree in Section 1(2) (B) Provides That: Any Decision, Whether Made Before Or After the Commencement of This Decree, By Any Court of Law in Exercise Or Purported Exercise of Any Power Under the Constitution Or Any Enactment Or Law of the Federation Or Any State Which Has Purported To Declare Or Will Herein After Purport To Declare the Invalidity of Any Decree Or of Any Edict.... Or the Incompetence of Any of the Governments in the Federation To Make the Same Is Or Will Be Null and Void and of No Effect Whatsoever As From the date of the Making Thereof. Section 1(3) (B) the Reference To Any Decree Or Edict Includes A Reference To Any Instrument Made By Or Under Such Decree Or Edict.

²³⁸ SANI, A. 2009. *the Nigerian Judiciary Trends Since Independence*. the University of Ilorin Law Journal, 5.

²³⁹ OSAGHAE, E.E. 2003. "in Search of Democratization Middle Ground: Nigeria and South Africa in Perspective". in MBAKU, J.M. AND IHONVBERE, J.O. eds., 2003. *the Transition To Democratic Governance in Africa: the Continuing Struggle*. Praeger Publishers: Westport.

violated the people's rights with impunity. The impunity of the military rubbed off on other security institutions as they all acted with impunity.²⁴⁰ As descriptively discussed by Yusuf (2007), in the "Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria,"²⁴¹ noted earlier on in the preceding sections. The military intervened with issues that were purely civil in character and corrupted the entire system.²⁴² Military and other quasi military detention facilities were full of civilians in military custody on alleged infractions not of a military nature. Nigeria was gradually reduced to a banana republic where respect for human rights, rule of law and due process had taken flight.²⁴³

It should be mentioned here that when ouster clause provision first appeared in 1966 in Nigeria's legislative lexicon, the courts asserted jurisdiction to examine the legality and propriety of acts challenged before them, to judge whether they were fully compliant with the law. In the case of *Agbaje v. Commissioner of Police*,²⁴⁴ for example, the late Justice Akinola Aguda, an eminent Nigerian jurist held that before the Inspector General of Police could take advantage of the arbitrary powers to detain any person under the Armed Forces and Police (Special powers) Decree No. 24 of 1967,

"...the onus is cast upon him (Inspector General of Police) to establish before any court in which the exercise by him of powers conferred on him by the above provision has been challenged, that he has complied strictly with the enactment under which he has acted..."²⁴⁵

But once it was established that the official had complied with all the procedures for the exercise of his powers under the decree, the learned judge observed the court would decline jurisdiction to inquire into the validity of his actions. Some judges however went beyond this reasoning to hold that provisions in a decree curtailing access to court for breach of constitutional rights were

²⁴⁰ EBEGBULEM, J.C., 2012. *Corruption and Leadership Crisis in Africa: Nigeria in Focus. International Journal of Business and Social Science*, 3(11).

²⁴¹ Ibid.

²⁴² KOLAWOLE, D., 2005. *Colonial and Military Rules in Nigeria: A Symmetrical Relationship. Pakistan Journal of Social Sciences*, 3(6) 863-867.

²⁴³ FAGBADEBO, O., 2007. *Corruption, Governance and Political Instability in Nigeria. African Journal of Political Science and International Relations*, 1(2) 028-037.

²⁴⁴ (1969) *Nigeria Monthly Law Report*, 176.

²⁴⁵ *Armed Forces and Police (Special Powers) Decree No. 24 of 1967*.

legislative judgements and therefore unlawful. The first case to rebut this point is the case of Council of the University of Ibadan v. Adamolekun.²⁴⁶ In that case the government of the western region of Nigeria enacted an edict, abolishing rights of appeal to the Supreme Court, contrary to the provisions of the then 1963 Constitution. The appellant had appealed against the judgement of the high court of the region; an appeal pending judgement in the Supreme Court at the time the edict was promulgated. The appellant argued that the edict breached his constitutional right of appeal and to that extent the edict was unconstitutional and void. The state on the other hand argued that the ouster provisions in Decree No. 1 of 1966 precluded the court from questioning the validity of the edict. The Supreme Court held that Decree No. 1 of 1966 did not preclude inquiry into the question as to whether an edict was void or contravened the provision of the constitution, but the Decree merely barred the courts from entertaining cases questioning the legislative authority of the military government to enact a decree or an edict.²⁴⁷ The Supreme Court accordingly declared the edict unconstitutional and void, because it infringed on the appellant's constitutional right of appeal.²⁴⁸ The courts in this instance showed courage to stand up to the military to protect the rights of Nigerians by disregarding the ouster clause.

The second case in which the courts resisted the erosion of their powers is the case of Lakanmi v. Attorney General of Western Region of Nigeria & another.²⁴⁹ In that case an edict to confiscate the assets of indicted public officers contained a provision ousting the jurisdiction of the courts to inquire into anything done under the edict. The Supreme Court held that the ouster clause was contrary to the principles of separation of powers, which had been recognised in the 1963 Constitution.²⁵⁰ Giving the lead judgement for the Supreme Court, Chief Justice Adetokunmba Ademola declared that the ouster provisions in this case were

²⁴⁶ (1967) *All Nigeria Law Report*, 213.

²⁴⁷ *Ibid.*

²⁴⁸ *Ibid.*

²⁴⁹ (1971) *University of Ife Law Report*, 21.

²⁵⁰ NIGERIA, 1963. *the Constitution of the Federal Republic of Nigeria*. Federal Ministry of Information, Printing Division: Lagos.

nothing short of legislative judgement, an exercise of judicial power, and therefore unconstitutional and void.

The military government of Nigeria thought the Supreme Court had gone too far and reacted swiftly and decisively. Just a few days after the judgement the government promulgated the Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 28 of 1970 nullifying the court's decision, revalidating the edict and prohibiting judicial inquiry into anything done under any decree or edict. This subsequently rendered access to courts for breaches of constitutional rights impossible and the courts impotent.²⁵¹

The implication of this action by the military was to pave the way for a total affront on human rights and due process.²⁵² As later action of the successive military government shows, it could now detain critics and perceived opponents of the military on any flimsy excuse. The ordinary person had the door shut on them to approach the courts, the last bastion of hope for judicial redress.²⁵³ Its effect was the gross and wanton violation of human rights, which became the hallmark and legacy of military governance in Nigeria.²⁵⁴

The right to liberty and security of the person was one of the rights most affected during the years of military rule.²⁵⁵ The military suspended the human rights provisions of the constitution, ousting the jurisdiction of courts from looking into actions of the military government and, most importantly, with Decree No. 2 and related laws which allowed indefinite administrative detentions.²⁵⁶ The fact that these actions were arbitrary and could not be scrutinised by the judiciary gave rise to impunity, and those vested with the powers to implement these actions

²⁵¹ SAMBO, A.O., & ABDULKADIR, A.B. 2012. *Ouster Clauses, Judicial Review, Op.Cit. Oida International Journal of Sustainable Development*, 5(09), 95-108.

²⁵² ADESOJI, A.O. 2006. *Globalization of the Media and the Challenges of Democratisation in Nigeria*. *Nebula*, 3(4).38-50.

²⁵³ DADA, J.A. 2012. *Impediments To Human Rights Protection in Nigeria*. *Ann. Surv. Int'l & Comp. L.*, 18, 67.

²⁵⁴ NZARGA, F.D., 2014. *An Analysis of Human Rights Violation By the Nigerian Security Services*. *Jl Pol'y & Globalization*, 30; HOLZER, B. 2007. *Framing the Corporation: Royal Dutch/Shell and Human Rights Woes in Nigeria*. *Journal of Consumer Policy*, 30(3), 281-301.

²⁵⁵ *Federal Republic of Nigeria, 1999. Constitution of the Federal Republic of Nigeria 1999. S.35 (1) Federal Government Press.*

²⁵⁶ HARDING, A. AND HATCHARD, J. eds., 1993. *Preventive Detention and Security Law: A Comparative Survey (Vol. 31)*. Martinus Nijhoff Publishers: Dordrecht.

often misused them without question. Consequently, Nigerians witnessed gross violation of human right, which shook the very foundation of the people. Vocal attempts to confront this affront to their rights were met with further repression by the military and prohibition of judicial access.²⁵⁷ This section will consider in more detail how the military used decrees to limit and prohibit judicial access.²⁵⁸

3.2.6 Prohibition of judicial access

During the period under review various military governments prohibited judicial access through the promulgation of military decrees and edicts, which forbade the courts from questioning actions of the military government.²⁵⁹ In this regard the judicial duty of the courts was to scrutinise executive and administrative actions to ensure they complied with human rights standards and rule of law. A clear example is that anyone who was arrested under Decree No. 2 of 1984 could not get redress in court, because when invoked the decree suspends the fundamental right of citizens and precludes judicial inquiry into the lawfulness or otherwise of the detention.²⁶⁰

This subsection therefore will review the effects of prohibition of judicial access on human rights and due process. It is posited that if the military had allowed access to the courts, it would have opened its action up to judiciary scrutiny and prevented some of the grave abuses that occurred during the period under review.²⁶¹ It was because the actions of the military that impacted human rights were done in the absence of any judicial scrutiny that they were able to

²⁵⁷ OLOYEDE, B., 2004. *the Press Under Military Rule in Nigeria, 1966-1993: An Historical and Legal Narrative* (No. 73). Edwin Mellen Press: Lewinston.

²⁵⁸ AKINRINADE, B., 2002. *Human Rights Ngos in Nigeria: Emergence, Governmental Reactions and the Future*. *African Human Rights Law Journal.*, 2,110.

²⁵⁹ LEVAN, A.C., 2014. *Dictators and Democracy in African Development: the Political Economy of Good Governance in Nigeria* (Vol. 130) Cambridge University Press. Cambridge

²⁶⁰ *Sections 1 and 4 of Decree No. 2 of 1984.*

²⁶¹ YUSUF, H.O., 2008. *Calling the Judiciary To Account For the Past: Transitional Justice and Judicial Accountability in Nigeria*. *Law & Policy*, 30(2), 194-226.

operate unchecked and with reckless impunity.²⁶² This impunity can be traced previously in the works of Yusuf (2007)²⁶³.

Generally the effect of ouster clauses is to bar the courts from inquiring into executive conduct, thereby stripping the courts of their powers to examine the lawfulness of executive actions including arbitrary detention of citizens by agents of the government.²⁶⁴ Ouster clauses are in direct conflict with the provisions of Article 14 of the ICCPR under which everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, a right that is also guaranteed by the Nigerian Constitution.²⁶⁵

When the jurisdiction of courts is clearly spelt out by the constitution, persons who are aggrieved or affected by the actions of any institution of the State can have recourse to such courts for redress. This was not the case during the period under review as access to our courts was greatly restricted.²⁶⁶

3.2.7 State Security (Detention of Persons) Decree No. 2 of 1984

When civilian rule returned to Nigeria in 1979, the constitution prohibited detention without charge or trial beyond 24 hours.²⁶⁷ The combined effects of Sections 1, 32 and 274 of the 1979 Constitution, repealed all the administrative detention decrees.²⁶⁸ Chapter Four of the Constitution contained a justiciable bill of rights known as Fundamental Rights.²⁶⁹ Federal and state high courts were given original jurisdiction to hear complaints and offer redress in respect of breach of

²⁶² WATCH, H.R., 2007. Criminal politics: Violence, "godfathers" and corruption in Nigeria. *Human Right Watch*, 19(16).

²⁶³ Ibid.

²⁶⁴ DADA, J.A. 2013. *Judicial Remedies For Human Rights Violation in Nigeria: A Critical Appraisal*. *Journal of Law, Policy and Globalization*, 10.1-18.

²⁶⁵ DADA, J.A. 2012. *Impediments To Human Rights Protection in Nigeria*. *Ann. Surv. Int'l & Comp. L.*, 18, 67.

²⁶⁶ OKOGBULE, N.S., 2005. *Access To Justice and Human Rights Protection in Nigeria: Problems and Prospects*. *Sur. Revista Internacional Dedireitos Humanos*, 2(3), 100-119.

²⁶⁷ Section 32 of the Constitution of the Federal Republic of Nigeria 1979.

²⁶⁸ ABIOYE, F.T., 2011. *Constitution-Making, Legitimacy and Rule of Law: A Comparative Analysis*. *Comparative and International Law Journal of Southern Africa.*, 44,59; *Constitution of the Federal Republic of Nigeria (Enactment)* Decree No. 25 of 1978.

²⁶⁹ *Chapter 4 of the Constitutional of the Federal Republic of Nigeria 1979*.

any of these rights.²⁷⁰The constitutional regime in place then guaranteed human rights, due process and rule of law. Cases of human rights violation were vented in courts, which had jurisdiction to grant redress to the victims.

Further, the 1979 Constitution spelt out the jurisdiction of the High Court in each state because the drafters wanted to preclude the proliferation of ouster clauses, which had been the practice of military regimes.²⁷¹ In fact Section 236 (1) of the Constitution granted the High Court:

“...unlimited jurisdiction to hear and determine any civil proceedings in which the existence or the extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person...”²⁷²

However, this was only short-lived, as four years later the civilian government was overthrown in a military coup on 31 December 1983.²⁷³ With the return of the military, the 1979 Constitution was suspended, and the administrative detention decree and ouster clauses were reinstated. The military government first promulgated the Constitution (Suspension and Modification) Decree No. 1 of 1984.²⁷⁴ The State Security (Detention of Persons) Decree No. 2 of 1984 quickly followed.

The decree empowered the Chief of Staff Supreme Headquarters to detain without charge persons suspected of acts prejudicial to state security or harmful to the economic wellbeing of the country for a renewable period of three months. When invoked the decree suspended the fundamental right of citizens and precludes judicial inquiry into the lawfulness or otherwise of the detention.²⁷⁵ The

²⁷⁰ Section 42 of the Constitution of the Federal Republic of Nigeria 1979.

²⁷¹ NWABUEZE, B. 1979. “the Individual and the State Under the New Constitution”. Public Lecture delivered At the Nigeria Institute of International Affairs, Lagos.15.

²⁷² Section 236 (1) of the Constitution of the Federal Republic of Nigeria (1979)

²⁷³ SIOLLUN, M., 2009. *Oil, Politics and Violence: Nigeria's Military Coup Culture (1966-1976)*. Algora Publishing: New York.

²⁷⁴ WATCH, A., 1991. *Nigeria—On the Eve of ‘Change’—Transition To What*. New York: Human Rights Watch. *Social Psychology Review*, 3,193-209.

²⁷⁵ Sections 1 and 4 of Decree No. 2 of 1984.

detainee had no rights to be informed of the grounds of detention. The absence of judicial scrutiny undermined rule of law and encouraged impunity.²⁷⁶

It was under the application of these unabridged powers that critics and perceived opponents of the military government were targeted and their human rights violated. Most were arbitrarily detained under this decree as the military regimes flagrantly abused rule of law and due process, flaunting Decree No. 2 as their authority for the detention.²⁷⁷ No one dared question their legality, as the courts had already been hamstrung by ouster clauses contained in Decree No. 13 of 1984.²⁷⁸

The Federal Military Government (Supremacy and Enforcement of Powers) Decree No. 13 of 1984, Section 1(b) provides that:

- (i) No civil proceedings shall lie or be instituted in any court for or on account of or in respect of any act, matter or thing done or purported to be done or pursuant to any decree or edict and if any such proceeding are instituted before, or after the commencement of this decree the proceedings shall abate, be discharged and made void. The question whether any of the provisions of Chapter IV of the constitution or any other law has been, is being or would be contravened by anything done or proposed to be done in pursuance of any decree or edict shall not be inquired into in any court of law, and accordingly no provisions of the constitution shall not apply in relation to any such question.²⁷⁹

²⁷⁶ NWABUEZE, B.O., 1992. *Military Rule and Constitutionalism in Nigeria*. Spectrum Law Pub: Lagos.

²⁷⁷ AGBAKOBA, O., & FAGBOHUNLU, T.C. 1994. *Nigeria's State Security (Detention of Persons) Decree No. 2 of 1984: Exploding the Myth of Judicial Impotence*. *J. Hum. Rts. L. & Prac.*, 4, 46.

²⁷⁸ OGBONDAH, C.W., 1992. *African Military Dictatorship and the Nigerian Press*. *Africa Media Review*, 6(3).

²⁷⁹ EHWARIEME, W., 2011. *the Military Factor in Nigeria's Democratic Stability, 1999-2009*. *Armed Forces & Society*, 37(3) 494-511.

The implication of this section is that persons are now detained at the mercy of the military authorities.²⁸⁰ The role of the courts as a counter balance to arbitrary or illegal acts were undermined under military rule.²⁸¹

The State Security (Detention of Persons) Decree No. 2 of 1984 was severely amended by successive military regimes. Soon after General Ibrahim Babangida overthrew General Muhhamadu Buhari, he amended the decree to expand the number of authorities entitled to order detention and to lengthen the period for which an order was valid.²⁸²

In 1988 the decree was again amended to permit detention by the Minister of Internal Affairs. However, in 1990 the government withdrew the amendment and reduced the length of detention to six weeks. The authority to order detention was also reverted to a single official, the Vice President.²⁸³

After General Sani Abacha took power in 1993, he amended Decree No. 2 of 1984 and reverted the period of detention to a renewable period of three months, on the orders of the Chief of General Staff or the Inspector General of Police.²⁸⁴ In 1996 the government announced the revocation of Decree No. 14 of 1994, which had forbidden courts from issuing a writ of habeas corpus in respect of persons detained under Decree No. 2. The repeal of that decree was inconsequential, as the military government through the combined effects of Decrees No. 2 of 1984, No. 107 of 1993²⁸⁵ and No. 12 of 1994 still detained citizens arbitrarily and precluded judicial inquiry.

Each military regime toyed with this decree and amended it at will at their convenience. The right to rule of law, due process and fundamental liberties of

²⁸⁰ DAGNE, T. 2005, June. *Nigeria in Political Transition*. Library of Congress, Washington Dc, Congressional Research Service.

²⁸¹ ODELEYE, D.O., 2013. *thedoctrine of Natural Justice Under Civil and Military Administrations in Nigeria*. *Journal of Politics and Law.*, 6, 231.

²⁸² *the Chief of Staff and the Inspector General of Police Under thedecree Could Order Detention For Six Months*.

²⁸³ AFRICA WATCH, 1991. Nigeria—On the eve of ‘change’—Transition to what. *New York: Human Rights Watch. Social Psychology Review*, 3,193-209.

²⁸⁴ *Decree No. 2 of 1984 (Amendment Decree 1993)*.

²⁸⁵ *the Constitution (Suspension and Modification) Decree No. 107 of 1993 Promulgated On 17 November 1993 Was the Grand Norm. It Amended the Provisions of 1979 Suspending Basic Fundamental Rights and Precluded Judicial Inquiry Into the Validity of A Decree Or An Edict*.

ordinary Nigerians was not considered.²⁸⁶ Successive military governments were concerned only with its survival and how to entrench its hegemony by silencing critics and perceived opponents.²⁸⁷

In 1990, the decree was further amended and a weak and dependent advisory review panel, headed by the Federal Attorney General and composed mainly of members drawn from the executive arm of government, was established.²⁸⁸ The Review Panel was charged with the duty of reviewing the case of every person detained pursuant to an order made under the decree. If satisfied that circumstances no longer required the continued detention of the person, the panel would make recommendations to the Chief of General Staff for the revocation of the detention order. The Chief of General Staff is however not bound by the recommendations of the panel. Its efficacy cannot be ascertained as its activities were shrouded in secrecy. The Review Panel was not independent of the detaining authority and had no powers to order release of detainees. The ineffectual panel was a smokescreen by the military, to appear as if it was making some reform of the system. Nothing really changed as the violations of human rights through the use of decrees continued throughout the years of military rule.²⁸⁹

These decrees were grossly misused by the military as hundreds of human rights and pro-democracy activists were detained mostly incommunicado by various bands of security operatives flaunting these decrees, especially Decree No. 2 of 1984.²⁹⁰ Even though Decree No. 14 expressly prohibiting the issuance of writ of habeas corpus was repealed it had no effect, as the combined effects of Decree No. 107 of 1993 and Decree No. 12 of 1994 still precluded judicial inquiry. Some victims of human rights violations presented their cases to the Oputa Commission

²⁸⁶ OLARINMOYE, O.O., 2008. *Politics Does Matter: the Nigerian State and Oil (Resource) Curse*. *Africa Development*, 33(3).

²⁸⁷ FRANK, E.O., & UKPERE, W.I. 2012. *the Impact of Military Rule On Democracy in Nigeria*. *Journal of Social Sciences*, 33(3) 285-292.

²⁸⁸ *Decree No. 2 of 1984 (Amendment Decree 1990)*.

²⁸⁹ OTOGHILE, A., & EDIGIN, L.U. 2011. *the Military and the Press: Reflections On the Nigerian Situation*. *the Nigerian Journal of Research and Production Volume*, 18(2).

²⁹⁰ ELEBUTE, A., 2015. *Issues On the Gaggling of Nigerian Press With Obnoxious Laws*. *Afrrev Ijah: An International Journal of Arts and Humanities*, 4(1), 207-223.

and some of the upper military echelon appeared to defend their actions.²⁹¹ Unfortunately none of the top military officers who appeared before the Commission accepted any responsibility for their actions. They denied everything, and the victims were left with nothing.²⁹² Maybe, if there was an inducement such as the SATRC amnesty it may have been a different outcome. Another issue was the refusal of the three former leaders to appear before the Commission to render account to Nigerians.²⁹³

The refusal of the three former rulers to appear before the Oputa Commission was a missed opportunity for accountability and reconciliation.²⁹⁴ In relation to the latter, Yusuf asserted that “the fact that these Generals had raped the due process and crippled the rule of law under their regimes they should have given their account of their stewardship to Nigerians but instead they refused”.²⁹⁵ As Kukah aptly put it “the consequences of the non-appearance of the generals still remains a dark spot on the work of the Commission.”²⁹⁶

3.2.8 Freedom of expression

This section will discuss how the media and the military clashed because of the role the former played during the period under review. It should be recalled that after the legislative arm of the government was abolished, the judiciary, greatly weakened by ouster clauses and civil society, was hounded and emasculated, as some of its prominent leaders were in jail.²⁹⁷ The press then

²⁹¹ AMNESTY INTERNATIONAL. *Nigeria, Time For Justice and Accountability*. London, Uk: International Secretariat, 2000. Available At <http://www.Amnesty.Org/En/Library/Info/Afr44/014/2000> (Accessed June 12, 2008).

²⁹² CAMPBELL, E., 2001. *Days of Atonement: Searching For Justice in Nigeria*. Doctoral Dissertation, *These Times*.

²⁹³ AKA, J. 2006. *Black's Greatest Homeland: Nigeria Is Born Again*. Universe: Indiana.

²⁹⁴ GUÅKER, E. 2009. *A Study of the Nigerian Truth Commission and Why It Failed*, Master's Thesis, the University of Bergen. Op.Cit.

²⁹⁵ YUSUF, H.O. 2012. *Chequered Accounts: Truth, Justice and the Judiciary in Post Authoritarian Nigeria*. Op.Cit.

²⁹⁶ KUKAH, M.H., 2011. *Witness To Justice: An Insider's Account of Nigeria's Truth Commission*. Op.Cit 294.

²⁹⁷ LEBEAU, Y., 2013. *Nigeria During the Abacha Years (1993-1998): the domestic and International Politics of Democratization*. Institut français de recherche en Afrique.

assumed the position of the most dissenting voice against military misrule.²⁹⁸ The Nigerian press was already cut out for this role as the history of its vibrancy and combativeness dates back to colonial days.²⁹⁹

It is therefore important to say that writers like Ikime, ed. (2012), *Groundwork of Nigerian History*,³⁰⁰ Falola et al. (1989), *History of Nigeria*, vol. 1,³⁰¹ Crowder, (1966), *The Story of Nigeria*³⁰² and Falola et al. (1991), *History of Nigeria*, vol.3,³⁰³ qualified this assertion. The press played a salutary role in the struggle for independence in Nigeria. When compared to other African countries the plurality of the press in Nigeria is quite impressive.³⁰⁴

The 1979 Constitution gave the press the duties of ensuring that the fundamental objectives of the Constitution is upheld and that the government is responsible and accountable to the people”.³⁰⁵ In order to perform this onerous task, the press should enjoy reasonable freedom. Thankfully both the 1979 Constitution and the international human rights instruments that Nigeria had ratified provides for freedom of the press.³⁰⁶

At the time General Abacha took over government in late 1993, there were 35 major daily newspapers, 18 of which were controlled by federal and state governments while the rest were privately owned. In addition of the 34 weekly newspapers, 16 were government owned and 18 privately owned and of the weekly news magazines, 17 out of 19 were privately owned. But when it comes to the broadcast media the state dominates with federal and state governments owning 50 television and 30 radio stations.³⁰⁷ The impressive credentials of the

²⁹⁸ OJO, T., 2007. *the Nigerian Media and the Process of Democratization*. *Journalism*, 8(5), 545-550.

²⁹⁹ OLUKOTUN, A., 2004. *Repressive State and Resurgent Media Under Nigeria's Military Dictatorship, 1988-98* (Vol. 126). Nordic Africa Institute.

³⁰⁰ Ibid.

³⁰¹ Ibid.

³⁰² Ibid.

³⁰³ Ibid.

³⁰⁴ PARK, R., 1995. *Preface To the Nigerian Press Under the Military: Persecution, Resilience and Political Crisis, 1983–1993* By ADEYEMI. A. A Discussion Paper Presented At the Joan Shorenstein Centre, John F. Kennedy School of Government, Harvard University.

³⁰⁵ Section 21 of the 1979 Constitution of the Federal Republic of Nigeria.

³⁰⁶ Section 39 (1 and 2) of the 1999 Constitution of the Federal Republic of Nigeria; Article 9 African Charter On Human and Peoples Rights, Article 19 International Covenant On Civil and Political Rights.

³⁰⁷ *International Commission of Jurists: Nigeria and Rule of Law – Report of A Study 1996-*

Nigerian press meant that it could champion human rights and the struggle for democracy in Nigeria.³⁰⁸ To its credit the media took up this noble task of demanding human rights when the military junta was becoming more autocratic and desperate.³⁰⁹

The media brought the abuses by the military to the attention of the international community and vigorously campaigned for return to democracy, rule of law and human rights.³¹⁰ The salutary role of the media continued during the life of the Oputa Commission as it popularised the work of the Commission, and through radio and television brought life images and stories of abuse that the military inflicted on individuals who dared to dissent.³¹¹

While the media enjoyed relative press freedom during the short spells of civilian government, the scenario under the military had been different as the military resisted the attempts by the military to scrutinise its governance and became increasingly repressive to limit media scrutiny.³¹² More importantly, the section of the media known as the Lagos/Ibadan axis rose to become the arrowhead of counter hegemonic values by querying intently the political and economic direction of the military regimes. This brought the media into direct confrontation with the military. The battle line was drawn. The successive military regimes to curb what they perceived as radicalism by the media used a combination of decrees and strong-arm tactics to control the free flow of information.³¹³

The first victim of the military attack on the media was the radical editor of a Lagos based news magazine called News watch, Mr Dele Giwa, who was

1985-1995, 115.

³⁰⁸ SANTAS, T. AND OGOSHI, J.D., 2016. *An Appraisal of Mass Media Role in Consolidating Democracy in Nigeria*. *African Research Review*, 10(1) 73-86.

³⁰⁹ ASEMAH, E.S., EDEGOH, L.O. AND OGWO, C., 2013. *Employing the Mass Media For the Promotion of Human Rights in Nigeria*. *African Research Review*, 7(1) 47-60.

³¹⁰ OLUKOTUN, A., 2002. *Authoritarian State, Crisis of Democratization and the Underground Media in Nigeria*. *African Affairs*, 101(404) 317-342.

³¹¹ ADEJUMOBI, S. ED., 2010. *Governance and Politics in Post-Military Nigeria: Changes and Challenges*. Springer: London.

³¹² OJO, T., 2007. *the Nigerian Media and the Process of Democratization*. *Journalism*, 8(5), 545-550.

³¹³ DARÉ, S., 2007. *Guerilla Journalism. Dispatches from the Underground*. Xlibris, Corp: Bloomington.

assassinated on 19 October 1986 by a parcel bomb.³¹⁴ There were strong suspicions regarding the assassination, which pointed to military involvement because of his investigative journalism. Attempts by his legal counsel, Chief Fawehinmi Gani to prosecute three military officers, including former Head of State, General Ibrahim Babangida for his assassination, was frustrated by the military regime.³¹⁵ Later attempts to summon military officers before the Oputa Commission failed as the Supreme Court ruled that the Commission lacked powers to summon officers to appear before the Commission.³¹⁶

Consequently, there has been no accountability for the assassination of Dele Giwa, as the killers still walk free from the atrocities they committed. Those who were identified by credible evidence for their roles in his death refused to be held accountable and used the same courts when they were in power to shield themselves from scrutiny. The Oputa Commission was powerless to intervene as put forward by Shriver (1995)³¹⁷, and the case remains one of many unsolved killings, which was a grave violation of the right to life.³¹⁸ The absence of accountability is a major blight on the military dictatorship in Nigeria.

In continuing its military assault on the media, the Abacha regime in May 1995 arrested four journalists and charged them with being accessories for treason for writing newspaper articles questioning the veracity of the claim by government that there was a coup plot against General Abacha.³¹⁹ They were tried by a secret military tribunal and sentenced to life.³²⁰ The accused persons were

³¹⁴ IGBAFE, A.A. AND OFFIONG, O.J., 2007. *Political Assassinations in Nigeria: An Exploratory Study 1986-2005*. *African Journal of Political Science and International Relations*, 1(1) 009-019.

³¹⁵ ADEBANWI, W., 2008. *Trials and Triumphs: the Story of the News*. African Books Collective: Oxford.

³¹⁶ AKA, J. 2006. *Black's Greatest Homeland: Nigeria Is Born Again*. Op.Cit.

³¹⁷ Ibid.

³¹⁸ ADEYEMI, A., 1995. *the Nigerian press under the military: persecution, resilience, and political crisis, 1983-1993*. Joan Shorenstein Center, Harvard University, John F. Kennedy School of Government. Op.Cit.

³¹⁹ LEWIS, P., ROBINSON, P.T. AND RUBIN, B.R., 1998. *Stabilizing Nigeria: Sanctions, incentives, and support for civil society* (Vol. 3). Council on Foreign Relations.

³²⁰ OLUKOTUN, A., 2004. *Repressive State and Resurgent Media Under Nigeria's Military Dictatorship, 1988-98* (Vol. 126). Nordic Africa Institute.

not allowed access to lawyers of their choice and denied the right of appeal. The sentences were later reduced to fifteen years following international outcry.³²¹

Three journalists appeared before the Oputa Commission where they recounted their agonising experience in detention. They were arrested, detained and tortured by security agents and Abacha's henchmen. They named names of those who detained and tortured them. Another case that was prominent at the Commission's hearing was that of James Bagauda Kaltho, a reporter with News Magazine, who disappeared while on duty.³²²

The Commission summoned the former Chief Security Officer to General Sani Abacha, Major Al Mustapha, to appear before the Commission to give an account of what he knew about the disappearance of the journalist. Mustapha claimed that the journalist was killed in a bomb blast that occurred at a hotel in Kaduna on January 18, 1999 and buried by the police on January 19, 1999. The same account was earlier given by another Security Chief, Zakari Bui. The families of the journalist had little or no reprieve from the security chiefs who refused to take responsibility for past events. These cases exemplify the flawed pattern of the relationship between the press and the military government and how endemic human rights violation of perceived critics of the military regimes occurred during the dark days of military rule.³²³

The government arbitrarily arrested a total of seventy-six journalists and eight vendors.³²⁴ Constant harassment of the press and members of their families coupled with physical violence was the hallmark of General Abacha's regime.³²⁵ Some journalists for fear of personal safety even fled to exile.³²⁶ It was surprising that, despite this appalling record, General Abacha's regime pointed to the

³²¹ INTERNATIONAL COMMISSION OF JURISTS. 1996. *Nigeria and Rule of Law: A Study*. International Commission of Jurists: Geneva. 124.

³²² OJEBODE, A., 2013. *Ethical Dilemma Revisited: Pbo Newspapers and the Professional Elbowroom of the Nigerian Journalist*. *Journal of African Media Studies*, 5(3)295-312.

³²³ OLUKOTUN, A. 2005. *Repressive State and Resurgent Media Under Nigeria's Military Dictatorship, 1988-98*. College Press Ltd: Ibadan.

³²⁴ OLUGBOJI, B., AIGBOGUN, F. AND NWANKWO, C., 1994. *the Press and Dictatorship in Nigeria*. Constitutional Rights Project: Lagos.

³²⁵ OLUKOTUN, A., 2010. *the State As Undertaker: Power and Insurgent Media in Nigeria*. in *Encountering the Nigerian State (155-175)*. Palgrave Macmillan, New York.

³²⁶ *Journalists Like Nosa Igiebor of Tell Magazine Fled To London While Dapo Olorunyomi of News Magazine Fled To the USA*.

existence of an independent press to support its own claim to respect and promote human rights.³²⁷ It is ironic that the regime, despite several cases of killings and hounding of the media, could lay claim to a free press and could ascribe to being a supporter of free speech and media.

A crackdown on the media continued unabated until Abacha's sudden death on June 8, 1998. His successor, General Abdul Salam Abubakar, made efforts at national reconciliation; he invited all exiles to return home to help in rebuilding the nation. Within days of assuming power he released political prisoners including some journalists. Those who were exiled were able to return home.

Though the regime did not overtly harass the media it did not however repeal the obnoxious decrees, which were used to hound the press. The Abubakar regime was brief and focused on returning the country to democratic rule, which occupied the regime until handover to General Olusegun Obasanjo on May 29, 1999.

3.2.9 Minorities

The minorities in Nigeria are found in Northern and Southern Nigeria.³²⁸ However, oil was discovered by Shell in Oloibiri in the present Bayelsa State in June 1956 and later in other areas of the Niger Delta.³²⁹ The Niger Delta region captured the popular imagination and was viewed worldwide as the epitome of the minority question, due to untold environmental degradation and other forms of human rights violations suffered at the hands of the oil companies, especially Shell and the Nigerian government.³³⁰ The Niger Delta Region captures the plight of the minorities in Nigeria, thus our discussion will focus on the Niger Delta.³³¹

³²⁷ Article 19 (1997) "Nigeria: Abacha's Media Crackdown". A Report By Article 19: International Centre Against Censorship, Article 19: London.

³²⁸ RINDAP, M.R. AND MARI, I.M.A., 2014. *Ethnic Minorities and the Nigerian State*. *Afrrev Ijah: An International Journal of Arts and Humanities*, 3(3), 89-101.

³²⁹ GBADEBO, O.O. 2007. *Crude Oil and the Nigerian Economic Performance*; OKONTA, I., & DOUGLAS, O. 2001. *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*. *Op. Cit.*

³³⁰ OPUKRI, C.O. AND IBABA, I.S., 2008. *Oil Induced Environmental Degradation and Internal Population Displacement in the Nigeria's Niger Delta*. *Journal of Sustainable Development in Africa*, 10(1) 173-193.

³³¹ SUBERU, R.T., 1996. *Ethnic minority conflicts and governance in Nigeria*. Spectrum Books: Ibadan.

The Niger Delta covers the six states of Akwa Ibom, Bayelsa, Cross-River, Delta, Rivers and Edo. It is an area inhabited by about twelve million people with different cultures, languages and histories who, united by their historical status in Nigeria, now share a common identity as southern minorities. Historically, the peoples of the area were at the forefront of minority agitation in the colonial and immediate post-independence periods.³³² “Their situation has not changed as their demands and position in the Nigerian federation remain unaltered, despite the different commissions that have been set up by successive administrations to look at the question of minorities”.³³³ However, “the Niger Delta region remains grossly underdeveloped, pauperised, marginalised, and largely a poverty zone”.³³⁴ “The basic facilities and infrastructure of a modern society like potable water, electricity, health care facilities, good roads, cottage industries and employment are lacking in the area”.³³⁵ It is the complete lack of development, poverty and total neglect of the region despite the resources generated from the area that brought it into direct conflict with the state and the resultant human rights violation.³³⁶ This has naturally led to agitation and confrontation with oil companies and the Nigerian State. The bid to quell this conflict resulted in human rights violation of activists, who were up in arms against perceived injustice in the exploration of their natural resources.

The crisis in the Niger Delta region and the extent of human rights violation go beyond legal and judicial issues, and touch on the moral conscience of the Nigerian State and society. Successive regimes in Nigeria, especially military regimes, have displayed high-handed treatment, insensitivity and poor judgment. While the Niger Delta region remains the live wire of the nation’s economy

³³² ODEYEMI, J.O., 2014. *A Political History of Nigeria and the Crisis of Ethnicity in Nation-Building*. *International Journal of Developing Societies*, 3(1) 1-12.

³³³ DIBUA, J.I., 2005. *Citizenship and Resource Control in Nigeria: the Case of Minority Communities in the Niger Delta*. *Africa Spectrum*: Ibadan 5-28.

³³⁴ AARON, K.K., 2005. *Perspective: Big Oil, Rural Poverty, and Environmental Degradation in the Niger Delta Region of Nigeria*. *Journal of Agricultural Safety and Health*, 11(2) 127-134.

³³⁵ OGUDUVWE, J.I.P., 2013. *Poverty in Oil Rich Delta: A Study of Selected Oil Producing Communities in Delta State, Nigeria*. *Global Research Journal of Education*, 3(1), 1-11.

³³⁶ NWANKWO, B.O., 2015. *the Politics of Conflict Over Oil in the Niger Delta Region of Nigeria: A Review of the Corporate Social Responsibility Strategies of the Oil Companies*. *American Journal of Educational Research*, 3(4) 383-392.

through the oil produced, the activities of the State have been characterised by neglect, deprivation, violence and repression of the people.³³⁷

The activities of Multinational Corporations (MNCs) complement those of the State. The MNCs, through their oil exploration activities, are largely below international acceptable minimum standards, destroying the ecology and social systems of oil-producing communities, which form the basis of material livelihood.³³⁸ The unabashed arrogance and insensitivity of many oil companies are premised on its collaborative alliance with the Nigerian state.³³⁹ To summarise, life in the Niger Delta is nasty, short and brutal. It was therefore no surprise that the Niger Delta region, particularly the Ogoni nation, presented most of the petitions before the Oputa Commission to seek redress for untold violations that the people of the area suffered.

The most prominent case as previously mentioned was the judicial murder of foremost poet and minority rights activist, Kenule Saro Wiwa and eight of his kinsmen.³⁴⁰ These activists were tried under a flawed judicial process, sentenced to death and hanged by the Abacha junta and buried in secret graves.³⁴¹ As a further attempt towards national reconciliation President Obasanjo authorised the release of their bodies for decent burial.³⁴² This gesture had a cathartic effect on the families of the deceased and brought some form of closure in the sense that they could say, with certainty, where the remains of their loved ones lie.

To the credit of the Oputa Commission it made some efforts to reconcile the warring groups and factions in Ogoni land. This was an important aspect of the

³³⁷ AARON, K.K., 2005. *Perspective: Big Oil, Rural Poverty, and Environmental Degradation in the Niger Delta Region of Nigeria*. *Journal of Agricultural Safety and Health*, 11(2), 127-134.; OKONTA, I., & DOUGLAS, O. 2001. *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*. Sierra Club: New York, 97.

³³⁸ KADAFI, A.A., 2012. *Oil Exploration and Spillage in the Niger Delta of Nigeria*. *Civil and Environmental Research*, 2(3) 38-51.

³³⁹ OMOWEH, D.A. 2005. *Shell Petroleum Development Company, the State and Underdevelopment of Nigeria's Niger Delta: A Study in Environmental Degradation*. Africa World Press: Trenton.

³⁴⁰ OCULI, O., 2007. *Where Vultures Feast: Shell, Human Rights, and Oil in the Niger Delta*. *African Studies Review*, 50(2) 259-260.

³⁴¹ DORON, R., & FALOLA, T. 2016. *Ken Saro-Wiwa*. Ohio University Press: Athens.

³⁴² PHYSICIANS FOR HUMAN RIGHTS. 2000. *Physicians For Human Rights To Exhume Remains of Nigerian Activist Ken Saro-Wiwa*. Boston: Physicians For Human Rights [Online]. Available <http://www.phrusa.org/research/forensics/nigeria/kensaro.html>.

mandate of the Commission, which was to reconcile divided communities and to heal the nation.³⁴³

The Commission emphasised in its report that “it managed to unite and amalgamate the Ogoni Four and Ogoni Nine into the Ogoni Thirteen”.³⁴⁴ Unfortunately the Commission failed to reconcile the Ogoni’s with Shell, regarding its responsibility for environmental degradation, because of oil production and lack of effort in cleaning up oil spills and preventing further environmental damage.³⁴⁵

As will be further explored, one of the high points of the Oputa Commission was the modest effort it made in reconciling the Ogoni nation as a group. It was hoped that the success achieved with the Ogonis could have been replicated in other divided communities.

3.2.10 Prisons

The colonial government created the Nigeria prisons as an institution for punishment and deterrence and after independence in 1960; the new government unfortunately adopted the same model.³⁴⁶ The Prison plays a dual role, as it holds those awaiting trial until the judicial process is completed and it has permanent custody of convicts.³⁴⁷ The conditions in the Nigerian prisons are generally appalling and pitiable.³⁴⁸ This brings the prison system into direct conflict with human rights; the prison was an institution that was used and abused by the military as most victims of human rights violation in Nigeria were incarcerated in the Nigerian prison system after flawed or no trials. These detainees were subjected to disciplinary measures, which included corporal punishment, and

³⁴³ NWOGU, N.V. 2007. *Shaping Truth, Reshaping Justice: Sectarian Politics and the Nigerian Truth Commission*. Lexington Books: Lanham.

³⁴⁴ *Human Rights Violation Investigation Report 2002*, 9.

³⁴⁵ O’NEILL, T., 2007. *Curse of the Black Gold: Hope and Betrayal in the Niger Delta*. *National Geographic*, 211(2) 88-117.

³⁴⁶ AJAYI, J.O., 2012. *Nigeria Prisons and the dispensation of Justice*. *Afrrev Ijah: An International Journal of Arts and Humanities*, 1(3) 208-233.

³⁴⁷ ORAKWE, I.W. 2014. *the Origin of Prisons in Nigeria. Planning Research, Statistics, Prison Headquarters*, Abuja 2015.

³⁴⁸ OTU, M.S. AND NNAM, M.U., 2014. *the Impact of Prison Conditions and Social Forces On Criminal Recidivism in Nigeria*. *South Journal of Culture and Development*, 16(1),1-28.

other forms of ill treatment, which did not comply with international human rights standards,³⁴⁹ as outlined in the United Nations Standard Minimum Rules for the Treatment of Prisoners and other human rights treaties.³⁵⁰

The discussion on human rights violation in Nigerian prisons will reflect on two pertinent issues: to examine whether the administrative structure and operations of the Nigerian Prison Service was able to effectively meet its functions, and to examine human rights violations that occurred in prisons and under what circumstances they occurred. This approach will help us understand the situation of human rights in the prison system in Nigeria.

The Nigeria Prison Service stated in its submission to the Oputa Commission that:

“The large concentration of offenders in the nation’s prisons and their status in relationship to the state make incidence of abuse possible. The level of attention that hitherto has been accorded the Prison Service in Nigeria in reality has served to facilitate the violation of certain rights of prisoners”.³⁵¹

The Nigeria Prison Service (NPS) identified two main sources of human rights violation: violations arising from prison congestion, inadequate facilities and delay in the justice process; and violations arising from overbearing state policy and state officials, especially during the military regimes. According to NPS the above sources were responsible for human rights violation suffered in the context of Nigeria prisons. It was important to bring them before the Oputa Commission as step towards addressing them.

The Oputa Commission would give a holistic consideration to the problems that were identified and address them in its recommendation. After all, one of the

³⁴⁹ JEFFERSON, A.M., 2005. *Reforming Nigerian Prisons: Rehabilitating A ‘Deviant’ state*. *British Journal of Criminology*, 45(4), 487-503.

³⁵⁰ *UN Standard Minimum Rules For the Treatment of Prisoners (Nelson Mandela Rules) the Un Standard Minimum Rules For the Treatment of Prisoners (Smrs) Were Initially Adopted By the UN Congress On the Prevention of Crime and the Treatment of Offenders in 1955, and Approved By the Un Economic and Social Council in 1957.*

³⁵¹ NIGERIA PRISONS SERVICE. 2001. *Overview of Human Rights Violation and Professional Hazards in Nigeria Prison Service. A Written Presentation of the Nigeria Prison Service At the Special Public Hearing of the HRVIC, Held October 5 At the Women’s Development Centre, Abuja.*

main foci of the Commission was to stop future human rights violations. And one way to do this was to review institutional and other practices that encouraged human rights violations. For example, the National Committee on Prison Decongestion had identified 100 mentally ill prisoners during a prison assessment exercise and recommended to the Nigeria presidency that these mentally ill prisoners be transferred to the nearest mental health/psychiatric facilities for treatment. The recommendation was approved by the President in October 1999 but was not implemented. Because of the wilful disobedience of the presidential directives those mentally ill detainees remained in custody in violation of their right to health.³⁵² The continued detention of the mentally ill prisoners rather than transferring them to a psychiatric facility amounted to a violation of their right to health.

An inadequate health care provision for inmates was another key violation of their right to health.³⁵³ The prison officials were unable to transfer sick prisoners to state and federal hospitals due to lack of available funds for settlement of hospital bills. They argued that they don't have funding to pay the bills and the hospitals insisted they could not afford to waive the medical expenses. This clearly violates the right to health of the prisoners who are in custody of the State and for whom the State is supposed to be responsible for their health care as provided under international law.³⁵⁴ A perusal of the Prisons and Penal Reform Factsheet provides additional information on available statistics relating to mentally ill prisoners.³⁵⁵ It was unfortunate that there was no system in place between federal government institutions to harmonise their roles, and as a result of this inefficient system the right to health of the prisoners were compromised and jeopardised.

³⁵² LINES, R. 2008. *the Right To Health of Prisoners in International Human Rights Law*. *International Journal of Prisoner Health*, 4(1).3-53.

³⁵³ LINES, R., 2006. *From Equivalence of Standards To Equivalence of Objectives: the Entitlement of Prisoners To Health Care Standards Higher Than Those Outside Prisons*. *International Journal of Prisoner Health*, 2(4), 269-280.

³⁵⁴ MARINER, J., & SCHLEIFER, R. 2013. *the Right To Health in Prison: Advancing the Human Right To Health* 291.

³⁵⁵ *Prisoners Rehabilitation and Welfare Action (1999) Prisons and Penal Reform Factsheet, November Edition*. Lagos: Prawa. 13.

The NPS no doubt occupies a primary place in the criminal justice system.³⁵⁶ The problems militating against effective operations of the NPS have been enumerated here and elsewhere.³⁵⁷ The future focus will be to establish a strong human rights monitoring and investigation oversight, facilitate multi-agency collaboration, and the practical implementation of human rights standards in the treatment of prisoners and detainees.³⁵⁸ These measures if implemented will address the problems associated with the violation of the right to healthcare of prisoners, as well as other violations that occur as a result of weak institutional operations and lack of accountability.

The thesis posits that for the justice system to be meaningful, accessible, just, effective and humane, it needs to address the problems of prison conditions (including congestion) and poor treatment of prisoners. Practical initiatives highlighting best practice, non-custodial sanctions, and models of transformative and restorative justice need to be supported.

In addition, training of criminal justice agents/health professionals to improve the treatment of prisoners and detainees as well as the execution of programmes to address the problems faced by vulnerable prisoners, young offenders, women prisoners, foreign prisoners, mentally ill prisoners and prisoners on death row need to be encouraged.³⁵⁹

Planned intervention needs to be well articulated, coordinated and monitored with in-built elements of sustainability and civil society–government participation.³⁶⁰ Community participation and support is key to providing long-

³⁵⁶ SCHMALLEGGER, F. 2009. *Criminal Justice Today: An Introductory Text For the Twenty-First Century*. Pearson Prentice Hall: Upper Saddle River.

³⁵⁷ PRISONERS REHABILITATION AND WELFARE ACTION. 1998. *Agenda For Penal Reform in Nigeria*. Lagos: Prawa; ODINKALU, A., & EHONWA, L. 1991. *Behind the Wall*. Lagos: CLO; AGOMOH, U. 1996. *Decongesting the Nigerian Prisons: Strategies For the Remand Population*. Lagos: Prawa; AGOMOH, U., ADEYEMI, A., & OGBEBOR, V. 2001. *the Prison Service and Penal Reform in Nigeria: A Synthesis Study For the Safety, Security and Access To Justice Programme of DFID*. Lagos: Prawa.

³⁵⁸ ARAROMI, M.A., 2015. *Prisoners' Rights Under the Nigerian Law: Legal Pathways To Progressive Realization and Protection*. *Journal of Sustainable Development Law and Policy (the)*, 6(1) 169-198.

³⁵⁹ NDUKE, C., & IROKO, N.C. 2014. *Nigerian Prison Service (NPS) and the Challenges of Social Welfare Administration: A Study of Abakaliki Prison*. *Journal of Policy and Development Studies*, 9(1)20-28.

³⁶⁰ OBIOHA, E.E., 2011. *Challenges and Reforms in the Nigerian Prisons System*. *Journal of Social Sciences*, 27(2)95-109.

term validity and relevance for the programme. In addition, the military must desist from interfering with prison operations and statutory functions.

The reform of the Nigeria Prisons and Penal System should feed in to the reform of the wider justice system, which should target the promotion of safety, security and confidence in the justice system.³⁶¹ This will contribute to the overall stability of the country – economically, socially and politically. Also, it is important to note that any reform within the prison system should be complimented by economic, social and political reforms. This is the only way we can ensure an effective justice system in Nigeria that reflects human dignity.

3.2.11 The Nigerian Police Force

The focus of this section is to review the pattern of human rights violation by the Nigerian Police Force (NPF), as well as the structural and institutional factors that aided police violation of human rights.³⁶² The discussion will start with an analysis of the impact of military rule on the NPF followed by the pattern of police violation of human rights.

The institutional factors that aid police violation of human rights will follow. The reason for this approach is for the reader to understand how the police, who are supposed to be a civil force, colluded with the military in the litany of human rights violation that became the hallmark of the military era.

The absence of functional institutional structures that ensured accountability and guided police conduct made impunity possible and even tolerable.³⁶³ Anybody who promoted the hegemonic interest of the military junta

³⁶¹ OSASONA, T., 2015. *Time To Reform Nigeria's Criminal Justice System. Journal of Law and Criminal Justice*, 3(2) 73-79.

³⁶² INNOCENT, C., 1996. *the Legal Structure of the Police and Human Rights in Nigeria. Third World Legal Studies*. 41.

³⁶³ ALEMIKA, E.E.A. 2003. *Police Accountability in Nigeria, Framework and Limitations: Civilian Oversight and Accountability of Police in Nigeria*; ALEMIKA E.E.A., & CHUKWUMA, I.C. eds. Centre For Law Enforcement Education (Cleen): Lagos. 45-48.

was not held accountable for his or her actions.³⁶⁴ It is important to note that Zehr (1990)³⁶⁵ explicitly elaborates on the issue of accountability in restorative justice.

3.2.11a Impact of military rule on the police

The condition of the police in Nigeria deteriorated due to persistent seizure of political power by the military, which prevented the development of democratic culture, adherence to rule of law and due process and protection of human rights by the police in the country.³⁶⁶ When the military took power in 1966, it appointed the then Inspector-General of Police, AL haji Kam Selem, and his deputy as members of the Supreme Military Council.³⁶⁷ These appointments could be described as a marriage of convenience between the police and the military, which neither boosted police image among the populace nor enhanced their efficiency in discharging their constitutional responsibilities.³⁶⁸

Writing on why the military co-opted police leadership into their ruling council, S.A. Asemota noted:

...Military personnel at the time (1966) were relatively few (11,000) and the only federal law enforcement agency that had presence throughout Nigeria was the Nigerian Police [Force]. It became clear that the army could not effectively rule without police assistance. Added to this fact, was the role the police played during the difficult days after the death of Major-General Ironsi. Police Force Headquarters at Moloney Street, Lagos, was used as Command Headquarters by Gowon for a short but crucial period, while police communication system, which covered the country at the time, was

³⁶⁴ BADMUS, I.A., 2005. *Retired Military Officers in Politics and the Future of Democracy in Nigeria*. *Africa Insight*, 35(3).55-63.

³⁶⁵ Ibid.

³⁶⁶ FRANK, E.O. AND UKPERE, W.I., 2012. *the Impact of Military Rule On Democracy in Nigeria*. *Journal of Social Sciences*, 33(3), 285-292.

³⁶⁷ *the Supreme Military Council Was the Body That Ruled Nigeria After the Coup D'état in 1966 Until It Was Dissolved, Following the Nigerian Parliamentary Election in 1979 and the Second Nigerian Republic*.

³⁶⁸ CHUKWUMA, I.C. 1998. *Police Powers and Human Rights in Nigeria*. *Law Enforcement Review*, January-March 1998. 36.

the most efficient. Thus, coalition of military/police in government was the most logical given the situation at the time.³⁶⁹

While this marriage of convenience between the police and the military lasted, police needs were largely provided for and its leadership under Alhaji Kam Selem was highly respected by the military. However, the romance period did not last long. During the civil war, which broke out in 1967, the military had to recruit additional hands to prosecute the war. This led to an increase of armed forces personnel to about 250, 000, thus making the need for the police in military governance less necessary.³⁷⁰ Commenting on the consequences of this development, Asemota stated:

“...With the increased strength of the army, and the existence of military formations in most part of Nigeria, some officers then questioned the need for the police in government...”³⁷¹

This resentment notwithstanding, the police continued to be part of the federal military government throughout the period of General Gowon’s regime. However, with his overthrow by General Murtala Mohamed in 1975, military hostility against police involvement in government intensified and police personnel were excluded from direct governance of states. Since then, the relationship between the police and the military has become that of a master and servant.

The consequence of police involvement in governance is that the police as an institution became complicit with the proclamation of all the draconian decrees of the military, which were anti human rights. As the police were directly responsible for the maintenance of law and order its cadre were mostly responsible for the enforcement of anti-human rights decrees such as Decree No.

³⁶⁹ ASEMOTA, S.A., 1993. *Policing Under Civilian and Military Administration. Policing Nigeria*, .59.in TAMUNO, T.N., BASHIR, I.L., ALEMIKA, E.E.O. AND AKANO, A.O., 1993. *Policing Nigeria: past, present and future*. Malthouse Press: Lagos.

³⁷⁰ BASHIR, I.L., 1993. *Towards An Effective Nigeria Police Force. Policing in Nigeria: Past, Present and Future*, 564-590”. in TAMUNO, T.N., BASHIR, I.L., ALEMIKA, E.E.O. AND ‘ AKANO, A.O., 1993. *Policing Nigeria: past, present and future*. Malthouse Press: Lagos.

³⁷¹ ALEMIKA, E.E.O. AND CHUKWUMA, I.C., 2004. *Analysis of Police and Policing in Nigeria: A Desk Study On the Role of Policing As A Barrier To Change Or Driver of Change in Nigeria, Prepared For the department For International Development (Dfid), By Prof. Etannibi E.O Alemika and Innocent C. Chukwuma At the Cleen Foundation, Lagos.*

2 and Decree No. 4. Apart from the militarisation of the police, their cadres were undisciplined. They took the law into their own hands and were hardly champions for human rights.³⁷² This evidence was traced in the Human Rights Violation Investigation Commission Report (May 2002),³⁷³ which is earlier on cited in chapter one.

3.2.11b Pattern of human rights violations by the police

The previous subsection examined how the police were co-opted into governance by the military after it took power in January 1966. This subsection will review the pattern of human rights violation by the police during the period under review, the extent of these violations and how they affected human rights culture in the country.

The reason for this approach is to bring to the fore human rights issues the Oputa Commission had to confront in the fulfilment of its mandate. A holistic review of the pattern of abuse will guide the reader towards understanding the human rights challenges the country faced, and how those who were entrusted with the governance of Nigeria used their positions to override the human rights of Nigerians.

A brief account of police powers under various Nigerian laws helps to understand the extent of police powers and how they exercised them. The Nigerian Constitution, the Police Act, Criminal Procedure Act (CPA), Criminal Procedure Code (CPC) and numerous other statutes grants enormous power to the NPF to enable them to perform their duties.³⁷⁴ These include the powers of arrest, search, seizure, detention and the power to use reasonable force in certain circumstances. The exercise of each of these powers affects the citizen and therefore their fundamental rights are more directly affected by police activities

³⁷² CHUKWUMA, I., 2003. *Internal Disciplinary Systems As Important Complement To External Oversight of Police in Nigeria. Civilian Oversight and Accountability of Police in Nigeria.* ALEMIKA E.E.A & CHUKWUMA I.C. eds. *Civilian Oversight and Accountability of Police in Nigeria.* Centre For Law Enforcement Education (Cleen): Lagos, 59-74.

³⁷³ Ibid.

³⁷⁴ S.23, 24, 28 and 29 Police Act; S. 214 (2b) of the Constitution of the Federal Republic of Nigeria 1999.

than by those of other internal security forces in the country.³⁷⁵ Any abuse in the exercise of these powers invariably results in the violation of the fundamental rights of the citizen. The police are expected to follow due process of law and observe human rights in carrying out their duties. Any deviation from the principles of due process and human rights invariably leads to human rights violation.

As documented by human rights monitors the police, most of the time, did not apply due process and showed utter disregard for human rights standards in carrying out their duties. For example, in 1991, the Civil Liberties Organisation (CLO) reported that the police killed on average more than three persons under extrajudicial circumstances per month in Nigeria.³⁷⁶ Follow-up research by the organisation in Lagos State in 1992 made a shocking revelation. Between January and September of that year “the corpses of 449 people whose deaths were suspected to have been under extrajudicial circumstances were deposited in the mortuaries of Ikeja General Hospital alone. This figure shows an average of 49.8 corpses per month or 1.66 per day in Lagos State”.³⁷⁷

Although the Lagos State Police Command in a press statement denied the report, the CLO’s call for an official investigation into the matter as required under the United Nations Principles on Effective Prevention and Investigation of Extra-Legal, Arbitrary or Summary Execution was not heeded.³⁷⁸ Principle 9 states:

“...There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances...”³⁷⁹

³⁷⁵ AJOMO, M.A., & OKAGBUE, I.E. eds. 1991. *Human Rights and the Administration of Criminal Justice in Nigeria*. Lagos: Nigeria Institute of Advanced Legal Studies, .98; EZE, O.C. 1993. “the Police, Rule of Law and Human Rights”. in Tamuno, T. N. *Policing Nigeria: Yesterday, Today and Tomorrow*. Malt House Press Limited: Lagos. 417.

³⁷⁶ CHUKWUMA, I. 1994. “Above the Law”. *Report On Torture and Extrajudicial Killing By the Police in Lagos State*. Civil Liberties Organisation: Lagos.72.

³⁷⁷ NIGERIAN HUMAN RIGHTS PRACTICES. 1994. *Author: U.S. Department of State, February 1995*; CHUKWUMA, I., 1994. *Above the Law: A Report on Torture and Extrajudicial Killing by the Police in Nigeria*. Civil Liberties Organisation: Lagos.

³⁷⁸ Ibid.

³⁷⁹ *Principles On the Effective Prevention and Investigation of Extra-Legal, Arbitrary and*

This clearly shows that there was a pattern of extrajudicial killing by the police in Lagos state, which the police authorities neither acknowledged nor addressed. Their refusal to investigate this allegation meant they continued unabated and this led to several cases of violation of the right to life.

In “Transitional Justice In Kenya: A Historical Perspective and a Synopsis of a Troubled Truth Justice and Reconciliation Commission”, a similar trend is talked about in sense that, in Kenya also, violent subjugation and suppression of resistance by the colonial state, marked by land appropriation, extrajudicial killings, torture, detentions without trial, compulsory resettlement and other human rights violations.³⁸⁰Jorre (1972)³⁸¹ is earlier on cited to have discussed the human rights violations in Nigeria during the civil war.

This section clearly demonstrates that even though the police were given extensive powers to maintain law and order, an effective system was not put in place to ensure they followed due process of law and complied with international human rights standards.³⁸² The government institutions that were meant to check police excesses were lax in their duties while the efforts of human rights organisations to highlight these violations were largely ignored by the police and state authorities.³⁸³

The Oputa Commission also highlighted police abuse of human rights and made recommendations to address this situation in the future.³⁸⁴ The report of the Commission was to lay the foundations for a new Nigeria that would be a hallmark for the respect for human rights and due process. In the report, the Commission undertook a holistic journey into the past in Nigeria and set a road map for the future.³⁸⁵ Like in Kenya, the Truth commission strictly observed that

Summary Executions Recommended By Economic and Social Council Resolution 1989/65 of 24 May 1989.

³⁸⁰ TRANSITIONAL JUSTICE IN KENYA: *A Historical Perspective and A Synopsis of A Troubled Truth Justice and Reconciliation Commission.*

³⁸¹ Ibid.

³⁸² ADEBAYO, D.O., 2005. *Ethical Attitudes and Prosocial Behaviour in the Nigeria Police: Moderator Effects of Perceived Organizational Support and Public Recognition.* *Policing: An International Journal of Police Strategies & Management*, 28(4).684-705.

³⁸³ OKOGBULE, N.S., 2005. *Access To Justice and Human Rights Protection in Nigeria: Problems and Prospects.* *Sur. Revista Internacional Dedireitos Humanos*, 2(3).100-119.

³⁸⁴ IKHARIALA, M. 2004. *the Oputa Reports: An Unfinished Job.* *Op. Cit.*

³⁸⁵ HUMAN RIGHTS VIOLATION INVESTIGATION COMMISSION, 2007. *HRVIC Report*,

exposing and publicizing these gross violations of human rights is important for posterity so that the country's shameful past may never be repeated against the people: massacres, colonial oppressions, killings and confiscation of livestock, torture of men including castration, human rights abuses, oppressive laws and dumping of suspected radio-active material in the Wagalla province.³⁸⁶

3.3 Human rights under the democratic dispensation (1999–2001)

3.3.1 Transition to civilian rule

This sub section reviews the state of human rights following a transition to a civilian rule programme following the sudden death of the Head of State, General Sani Abacha. General Abdulsala Abubakar who succeeded the late Head of State decided to depart from the repressive and anti-human rights tactics of the previous regime and play a part in national reconciliation.³⁸⁷ The new regime embraced reconciliation by releasing imprisoned pro-democracy and human rights activists.³⁸⁸ It charted a new cause and signalled to Nigerians that a new era had emerged.

It was ultimately the new approach to governance, which respected due process and human rights that gave further voice to the people who demanded accountability for past abuse.³⁸⁹ The people reasoned that if the past is not reviewed then no lessons will be learnt and there will be no accountability for past abuse.³⁹⁰ If there is no accountability then history may repeat itself and the ghost of the past will keep haunting the nation, and affect its growth and progress as a

Conclusions and Recommendations, Synoptic Overview. Unpublished, Available
[Http://www.Nigerianmuse.Com/Nigeriawatch/Oputa/](http://www.Nigerianmuse.Com/Nigeriawatch/Oputa/) (Accessed, 19).

³⁸⁶ MUTUA, M., 2004. *Republic of Kenya Report of the Task Force On the Establishment of A Truth, Justice and Reconciliation Commission. Buffalo Human Rights Law Review.*, 10.15.

³⁸⁷ LEWIS, P., 1999. *Nigeria: An End To the Permanent Transition? Journal of Democracy*, 10(1).141-156.

³⁸⁸ MAIER, K., 2000. *This House Has Fallen: Midnight in Nigeria (368). Public Affairs: New York.*

³⁸⁹ OKENE, O.V., 2005. *Curbing State Interference in Workers' Freedom of Association in Nigeria. Int'l J. Not-For-Profit L.*, 8.86.

³⁹⁰ ADENRELE, A.R. AND OLUGBENGA, O.M., 2014. *Challenges of Human Rights Abuses in Nigerian Democratic Governance–Which Way Forward? Journal of Social Economics Research*, 1(5).87-96.

nation. This is because the place of a truth commission in a political transition from a dark past is not hard to see. Dictatorships leave behind highly fragmented societies in urgent need of national healing, harmony and unity.

The process of looking at the past must be one that helps debunk the myths that helped perpetuate the dictatorship by establishing historical truth, restoring the dignity of the people through some measure of justice availed to the victims and country in general and work towards national unity and reconciliation³⁹¹. The latter was elucidated in the previous chapters by Gutteridge (1969), in *The Military in African Politics*.³⁹²

The history of modern Nigeria from 1960 paints a gory picture of successive coup d'état, which prevented the evolution of a democracy in the country.³⁹³ Indeed, after almost a decade of military rule, General Babangida annulled the 1993 democratic election of Chief Moshood Abiola, preventing Abiola from assuming office.³⁹⁴ Abiola was later jailed under General Abacha's regime and died under military custody without realising his mandate.³⁹⁵ Babangida subsequently resigned and was succeeded by Ernest Shonekan. Later that year, General Abacha seized power and once again installed military rule. Military rule in Nigeria under General Abacha was a serious reversal for democracy and human rights. It ended the incremental gains made toward genuine democracy in Nigeria.

In 1995, General Abacha announced that a military regime would return Nigeria to democratically elected civilian rule by October 1, 1998.³⁹⁶ Despite this announcement, there was little meaningful progress towards democracy, and critics of Abacha questioned whether the regime would have indeed allowed the

³⁹¹ MUTUA, M., 2004. *Republic of Kenya Report of the Task Force On the Establishment of A Truth, Justice and Reconciliation Commission*. *Buffulo Human Rights Law Review.*, 10.15.

³⁹² Ibid.

³⁹³ SIOLLUN, M., 2009. *Oil, Politics and Violence: Nigeria's Military Coup Culture (1966-1976)*. Algora Publishing: New York.

³⁹⁴ AMUWO, A. 2007. *Politics of Annulment of the June 12, 1993 Presidential Election in Nigeria*. Malt House Monographs On Africa: Lagos, 3(2).

³⁹⁵ BACH, D.C. 2004. *"Nigeria: Towards A Country Without A State?" Paper Presented On Nigeria's Maximising Pro-Poor Growth—Regenerating the Socio-Economic Database, Organised By the Overseas Development Institute in Collaboration With the Nigeria Economic Summit Group*, London, June. 16-17.

³⁹⁶ OSHODI, A., 2007. *Return To Civilian Rule in Nigeria: Problems of Electoral Culture and Transparency Over the Past Three Nigerian Elections (1999–2007)*. *the Round Table*, 96(392).617-630.

transition to civilian rule. General Abubakar freed political prisoners, including those imprisoned, following flawed trials before secret military tribunals and announced a transition to civilian rule.³⁹⁷

The release of these prisoners indicated that the government wanted to toe the line of reconciliation and national healing. The international community had earlier condemned the trial and conviction of these alleged coup plotters by the Abacha regime as flawed and lacking judicial legitimacy.³⁹⁸ The new regime, by releasing these prisoners, showed it was serious in charting a new course and distancing itself from the abysmal human rights records of the Abacha regime.

The action of the new regime lowered the political temperature and tensions in the country and restored some confidence that the regime was serious in leading the country towards democratic rule.³⁹⁹ This is a notion that is broadly shared by Ogundiya (2010).⁴⁰⁰

3.3.2 Presidential election

This section will focus on the 1999 presidential election, which was remarkable because it came after sixteen years of uninterrupted military rule and endless attempts at transition to civil rule by the regimes of Generals Babangida and Abacha.⁴⁰¹ This process was daunting, as military rule had left the body politics of Nigeria scarred with serious negative implications for rule of law, due process and human rights.⁴⁰²

³⁹⁷ BADMUS, I.A., 2005. *Retired Military Officers in Politics and the Future of Democracy in Nigeria*. *Africa Insight*, 35(3).55-63.

³⁹⁸ LEBEAU, Y., 2013. *Nigeria During the Abacha Years (1993-1998): the domestic and International Politics of Democratization*. Institut français de recherche en Afrique.

³⁹⁹ OBADARE, E., 1999. *the Press and Democratic Transition in Nigeria: Comparative Notes On the Abacha and Abubakar Transition Programs*. *African Issues*, 27(1), 38-40.

⁴⁰⁰ Ibid.

⁴⁰¹ AKINRINADE, S., 2006. *An Army of Ex-Presidents: Transitions, the Military and Democratic Consolidation in Nigeria*. *Leadership Change and Former Presidents in African Politics* 281.

⁴⁰² JEGA, A., 2007. *Democracy, Good Governance and Development in Nigeria: Critical Essays*. Spectrum Books Limited: Lagos.

As General Abubakar's regime commenced its transition programme, there was a consensus among the political elite led by the military to concede the presidency to the Yoruba ethnic group as compensation for annulment of the June 12, 1993 election, which Chief Abiola of Yoruba descent was poised to win.⁴⁰³

In view of this unwritten agreement, the leading candidates in the election were both of Yoruba descent and were political prisoners under General Abacha's regime. Former US President Jimmy Carter, who led a mission to observe the election, regarded this as the most important election in the world in 1999.⁴⁰⁴ Indeed, Nigeria is the world's sixth-largest oil producer, and roughly one-quarter of the population of sub-Saharan Africa lives in the country.⁴⁰⁵

Commentators recognised that although a credible election would not ensure democracy, without it, no success would be possible in the transition to democratic rule.⁴⁰⁶ In essence the world regarded Nigeria as a country whose stability was important for peace in the sub-region. It was considered important for the transition to be successful, as this would return the country to a democracy with attendant benefits, which included adherence to rule of law, proscription of all anti-human rights decrees and promulgation of the 1999 Constitution, which contained the Bill of Rights.

Despite Obasanjo's Yoruba heritage, critics of Obasanjo claim he was backed by the military and controlled by powerful northern political interests. In light of Nigeria's anti-democratic history under colonial rule and successive military regimes, the February 1999 election was regarded as a positive step towards democracy, particularly in a political atmosphere in which citizens traditionally have not had the right to change their government by peaceful means.⁴⁰⁷ While commentators recognise serious flaws in the electoral process, described by one observer as an exercise in organised fraud where principle made

⁴⁰³ UKIWO, U., 2003. *Politics, Ethno-Religious Conflicts and Democratic Consolidation in Nigeria*. *the Journal of Modern African Studies*, 41(1), 115-138.

⁴⁰⁴ KEW, D., 1999. *Democracy—Dem Go Craze, O: Monitoring the 1999 Nigerian Elections*. *African Issues*, 27(1).29-33.

⁴⁰⁵ UDOSEN, C., ETOK, A.I.S. AND GEORGE, I.N., 2009. *Fifty Years of Oil Exploration in Nigeria: the Paradox of Plenty*. *Global Journal of Social Sciences*, 8(2).37.

⁴⁰⁶ KLEIN, J., 1993. *Elections Aren't Democracy*. *Newsweek*, 122(2).35.

⁴⁰⁷ EGBEFO, O.D., 2015. *Fifteen Years of Democracy, 1999-2014: Reflections On Nigeria's Quest For National Integration*. *African Research Review*, 9(2), 59-77.

way for payoff; the election signified a major shift as a relatively free and fair election, and a nonviolent transition to democratic rule in a country marked by violent political transition.⁴⁰⁸

Olusegun Obasanjo was elected and sworn in as President of Nigeria on May 29, 1999, and in an address to the inaugural session of the National Assembly in June, Obasanjo articulated a commitment to reconciliation and unity, amidst national discussion of restructuring the federation of Nigeria into separate, autonomous states. Obasanjo believed that these demands to restructure federation are mostly borne out of deep frustration and despair over the persistent failure of central governments to meet the hopes and aspirations of the people. Obasanjo addressed feelings of marginalisation among Nigerians, encouraging reconciliation and unity:

“This whole nation has been traumatized by misrule. It is perhaps understandable that in the absence of a trustworthy, transparent and just central authority, each one feels a victim and suspects the other of being the oppressor. While not in any way condoning the misguided decisions or tactical miscalculations of the past, I will at this time, appeal for calm and mature reflections. We have come a long way as one Nigeria. As much as we have rejoiced together in times of triumph, let us reconcile our misunderstandings in times of disappointments. The imperative of stability and progress demands nothing less”.⁴⁰⁹

The speech by Obasanjo was a strong argument for national unity and reconciliation. It was also an admission that wrongs had been committed in the past and that his government was willing to make a fresh start for all Nigerians.⁴¹⁰

President Obasanjo faced complex obstacles to a stable and sustainable democratic government in Nigeria. While the 1999 presidential election was an important preliminary step toward democratisation, it offered no guarantee that democracy would be actualised. Obasanjo had the difficult task of implementing

⁴⁰⁸ SUBERU, R.T., 2007. *Nigeria's Muddled Elections*. *Journal of Democracy*, 18(4), 95-110.

⁴⁰⁹ OBASANJO, O., 1999. *Inaugural Speech. A Presidential Address, Federal Republic of Nigeria*, 29.

⁴¹⁰ MAIER, K. 2000. *This House Has Fallen: Midnight in Nigeria*. Public Affairs: New York. 368.

constitutional democracy despite severely distorted institutions, processes, and political attitudes of prior military regimes. The new government faced serious challenges of nation building and addressing the multifaceted challenges created by a long period of military rule.⁴¹¹

Moreover, many of those who participated in past corrupt regimes continued to hold power in Nigeria.⁴¹² A major challenge in Nigeria's democratic transition was that of preserving and consolidating democracy amidst threats and challenges by politicised militaries, morally bankrupt political classes, fragmented civil societies, a pervasive and palpable lack of democratic traditions, ethnic tensions, and dysfunctional political, economic and legal institutions.⁴¹³ Democracy cannot be realised unless human and structural problems that threaten democratic reform are meaningfully addressed.⁴¹⁴ It was also essential that collective violence and past human rights violation be examined as part of the measures to entrench democratic values and rule of law.⁴¹⁵

However, some commentators have argued that the election that ushered in the new democratic government was imperfect or even flawed. It was a necessary step to end military rule in Nigeria and begin a process of holistic review of the ills of the past towards a process of national healing, rebuilding of damaged state institutions and restoring the confidence of the people in the state as duty bearers to promote and protect human rights.⁴¹⁶

⁴¹¹ AGHALINO, S.O., 2009. *the Olusegun Obasanjo Administration and the Niger Delta Question, 1999-2007. Studies of Tribes and Tribal*, 7(1).57-66.

⁴¹² BADMUS, I.A., 2005. *Retired Military Officers in Politics and the Future of Democracy in Nigeria. Africa Insight*, 35(3), 55-63.

⁴¹³ OBI, C., 2004. *Nigeria: Democracy On Trial. Slnordiskaafrikainstitutet*.

⁴¹⁴ OKONJO-IWEALA, N., & OSAFO-KWAAKO, P. 2007. *Nigeria's Economic Reforms: Progress and Challenges*.

⁴¹⁵ BRANSCOMBE, N.R. AND CRONIN, T., 2010. *Confronting the Past To Create A Better Future: the Antecedents and Benefits of Intergroup Forgiveness. Identity and Participation in Culturally Diverse Societies: A Multidisciplinary Perspective*.338-358.

⁴¹⁶ BRATTON, M., 2008. *Vote Buying and Violence in Nigerian Election Campaigns. Electoral Studies*, 27(4).621-632.

3.3.3 Repeal of decrees

As discussed earlier in this chapter, the military proscribed sections of the constitution, which protect human rights and democracy and ruled by decrees.⁴¹⁷ It was therefore important that during the period of transition from military to democratic rule, these decrees, which are anti-democracy and human rights, are proscribed.⁴¹⁸ These decrees were used by various military regimes to override the rights of Nigerians, and through these decrees the growth of democracy and free speech was stunted.⁴¹⁹

Before handing power to chief Olusegun Obasanjo on May 29, 1999, General Abubakar signed Decree No. 63 of 1999 (Certain Consequential Repeals). Among the decrees repealed were Decree No. 2 of 1984 State Security (Detention of Persons) Decree; Decree No. 1 of 1986 Treason and Other Offences (Special Military Tribunals) Decree; and Decree No. 12 of 1994 (The Federal Military Government (Supremacy and Enforcement Powers) Decree.

In addition, Decree No. 63 repealed Decree No. 107 of the 1993 Constitution (Suspension and Modification) Decree, which suspended certain fundamental human rights provisions. Omitted from the repeals, however, were the State Security (Detention of Persons) Amendment Act Decree No. 3 of 1990 promulgated by General Babangida, and the State Security Service Detention of Persons Decree Nos. 14 and 15 of 1994. Because of these omissions, the Hon. Tony Anyanwu sponsored a bill before the National Assembly in July 2001, proposing to repeal all "draconian" state security decrees and other anti-democratic laws promulgated by former military heads of state. Implicit in the repeals instituted by General Abubakar and those instituted in the judiciary was recognition that certain decrees served as a foundation upon which previous regimes had abused power and violated human rights. The repeal of these decrees thus signified a departure

⁴¹⁷ EKEH, P., 2010, *December. Military Rule and Damage To the Spirit of the Nigerian Constitution. in Lecture delivered At A Forum Organized By Lagos State, Nigeria, At Eko City Hall.*

⁴¹⁸ ELEBUTE, A., 2015. *Issues On the Gagging of Nigerian Press With Obnoxious Laws. Afrrev Ijah: An International Journal of Arts and Humanities*, 4(1).207-223.

⁴¹⁹ LEWIS, P. 2006. *the dysfunctional State of Nigeria. Short of the Goal: Us Policy and Poorly Performing States.* Centre For Global Development: Washington DC. 83-116.

from a history of abuse of power to one in which it is envisaged that the constitution will be supreme, and rule of law would guide the conduct of the affairs of the State.

The repeal of these obnoxious decrees was a significant effort to break from past military practice. It restored the constitution as the grand norm and relegated the military to its rightful place in the barracks. This action guaranteed that the nation would be governed by rule of law rather than by rule of force. The parliament and the courts were restored so that representatives of the people would now make laws after going through a democratic process. The court, the bastion of hope for the ordinary person, was restored as an impartial arbiter where contentions are resolved in accordance with due process of law.

3.3.4 Human Rights Violation Investigation Commission (Oputa Commission)

This section is a general introduction to the work of the HRVIC (Oputa Commission), which President Obasanjo established as an accountability process for human rights violation by the military regimes in Nigeria.⁴²⁰ The Annual Report (1997), A CLO Report on the State of Human Rights in Nigeria,⁴²¹ Annual Report (1998), A CLO Report on the State of Human Rights in Nigeria,⁴²² explicitly report on this situation and the works of the Oputa commission in the previous submissions.

The Oputa Commission was one of President Obasanjo's first initiatives as president. The Commission had the mandate to ascertain the causes, nature, and extent of human rights violation or abuse committed between January 15, 1966 and May 28, 1999. It was established under the Tribunals of Inquiry Act, Chapter 447, Laws of the Federal Republic of Nigeria, an Act initially promulgated on June 2, 1966 to empower the President to constitute Tribunals of Inquiry and other matters ancillary thereto.⁴²³

⁴²⁰ Statutory Instrument No 8 1999 As Amended By Statutory Instrument No 9 of 1999.

⁴²¹ Ibid.

⁴²² Ibid.

⁴²³ Human Rights Violation Investigation Commission, 2002. Volume One. HRVIC Report, www.dawodu.com/Oputa1.htm (Accessed February 13, 2017).

The Oputa Commission project was an auspicious one because it was important for the violations that took place during the many years of military rule to be investigated and for those who suffered human rights violation to tell the truth of what happened.⁴²⁴ It was important for families of those who suffered violation to know what happened to their loved ones. President Obasanjo wanted to heal the wounds of the past; this however is not possible without knowing the truth of that past. The Oputa Commission offered the platform for a process of truth telling and reconciliation without which a new Nigeria could not emerge.⁴²⁵ It was an important process to usher in a post military Nigeria.

The Oputa Commission received an extensive mandate which granted the Commission powers to 1) procure written or oral evidence, and to examine all persons as witnesses as the tribunal deems "necessary or desirable to procure or examine"; 2) require evidence to be given upon an oath "as is required of a witness testifying before a magistrate's court"; 3) summons any person in Nigeria to attend any meeting of the tribunal to give evidence or produce any document or other thing in his possession and to examine him as a witness to issue a warrant to compel the attendance of those refusing or neglecting to appear to the satisfaction of the tribunal; 4) admit evidence regardless of its admissibility in a civil or criminal proceeding; and 5) the power to act upon such evidence.

Additionally, a person failing, refusing, or neglecting to appear before the tribunal based upon a summons, or refusing to answer a question presented by the tribunal, shall be guilty of an offence and liable for a fine of two hundred naira, or to a term of imprisonment of six months. The above shows that the Commission was given extensive powers to achieve its mandate, or so President Obasanjo thought. However, future events showed that the president was wrong in setting up the commission without going through the parliament as was done in South Africa.⁴²⁶ It is also ironic that the president drew inspiration from the acclaimed

⁴²⁴ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286.

⁴²⁵ KNIGHT, E., 2002. *Facing the Past: Retrospective Justice As A Means To Promote Democracy in Nigeria*. *Connecticut Law Review*, 35, .867.

⁴²⁶ IWU, C.G. AND ADEOLA, G.T., 2011. *Leadership Effectiveness, Truth Commissions and Democratization in Africa*. *Journal of Sciences And Development Sciences*, 2(3): 121-130.

success of the South Africa process, but refused to follow the good lessons of the Commission.⁴²⁷ Some commentators have even argued that the establishment of the Oputa Commission was lip service by president Obasanjo, as he never intended the Commission to succeed.⁴²⁸ These arguments will be discussed in more detail in chapter four of the thesis.

President Obasanjo while inaugurating the Commission stated:

“the Investigation Panel being inaugurated today is consistent with this administration's policy of openness and transparency in the conduct of government business as well as our determination to heal the wounds of the past and quickly put the ugly past behind us so as to continue to stretch our hands of fellowship and friendship to all Nigerians for complete reconciliation based on truth and knowledge of the truth in our land. We want to reconcile all those who feel alienated by past political events, heal wounds inflicted on our people and restore harmony in our country. We want the injured and the seemingly injured to be reconciled with their oppressors or seeming oppressors. That is the way to move forward”.⁴²⁹

The above statement reinforces the earlier sentiments that the political and human rights situation in Nigeria when president Obasanjo was sworn in needed a process of truth telling, reconciliation and accountability to advance the country. Professor Mutua the chairperson of task force mandated to establish the Kenyan truth commission argued that, “Kenyans want an effective and credible truth commission, an institution that will not engage in a witch-hunt or a whitewash. Such a commission must have the powers to recommend lustration, that is, to bar offenders from holding public office. It must be empowered to recommend redress for victims, such as compensation, restitution, and reparations. It should be authorized to inquire into stolen property and funds.

⁴²⁷ AMBOS, K., LARGE, J. AND WIERDA, M. eds., 2008. *Building A Future On Peace and Justice: Studies On Transitional Justice, Peace and Development the Nuremberg Declaration On Peace and Justice*. Springer Science & Business Media: Berlin.

⁴²⁸ GUÅKER, E. 2009. *A Study of the Nigerian Truth Commission and Why It Failed*, Master's Thesis, the University of Bergen.

⁴²⁹ DOXTADER, E. AND VILLA-VICENCIO, C. eds., 2004. *To Repair the Irreparable: Reparation and Reconstruction in South Africa*. Op. Cit.

Moreover, to recommend that they be returned to the public or the individuals from whom they were stolen.

The truth commission should investigate gross human rights violations and economic crimes and recommend prosecutions.”⁴³⁰After the inauguration of the Commission, it invited memorandums from all Nigerians who felt aggrieved by the ills of the past. They were received from all corners of Nigeria reinforcing the fact that all Nigerians were victims of past atrocities.

The Commission received about 10,000 memoranda of human rights violation and after some delays held public hearings across the country. It heard testimony regarding human rights violation throughout a period of five military dictatorships (beginning in 1966) and examined the actions of the military, special security forces, and the administrations of former Heads of State. In a controversial action by the Commission, former Heads of State and other high-ranking military officials were called to testify before the panel to account for human rights violation occurring during their regimes.

The Commission heard testimony by relatives of those believed to have been executed by state agents due to their non-violent political activities or relationship with critics of the government. Some petitioners before the Commission sought justice; others requested reinstatement in their jobs, or financial compensation for property seized or to obtain medical treatment for injuries resulting from torture or ill treatment at the hands of security forces. Testimony before the Commission revealed abuse committed by the State Security Services.

These revelations, however, were often met with denial, as many security officers named by witnesses as responsible for detention, torture or murder of relatives of petitioners to the panel denied the accusations before the Commission. In contrast, some testimony by security officers consisted of revelations of human rights violations. The Commission to its credit held no Nigerian above the law, calling the highest officials to testify before the Commission.

⁴³⁰ MUTUA, M., 2004. *Republic of Kenya Report of the Task Force On the Establishment of A Truth, Justice and Reconciliation Commission*. *Buff. Hum. Rts. L. Rev.*, 10.15.

The three former heads of State refused to appear before the Commission and sought the court's interpretation of the powers of the Commission to summon them. The Supreme Court in its decision limited the investigative powers of the Commission to the Federal Capital Territory only and ruled that under the 1999 Constitution the powers to establish "tribunals of inquiry belonged to the states, not the federal authority".⁴³¹ This ruling had a devastating effect on the work of the Commission, as president Obasanjo relied on this ruling as an excuse not to implement the recommendations of the Commission.

Although some commentators criticised the Commission for presenting a narrow and superficial account of crimes committed during the military regimes, it enjoyed extensive legitimacy among Nigerians. The Commission, at the end of its work, submitted an eight-volume report of about 15,000 pages on human rights violations committed during the military era and this report was handed over to the government in June 2002.⁴³² It is remarkable that despite all the challenges faced by the Commission, it was able to complete its work and deliver the report.

The thesis will later reflect on the daunting challenges faced by the Oputa Commission ranging from lack of budget to staffing during its tenure.⁴³³ An issue that was earlier on discussed as ethics for enemies and forgiveness in politics, in which Shriver (1995)⁴³⁴ considered too many experts as the primary reason for the failure of the Oputa Commission. Unfortunately, the government, citing the decision of the Supreme Court, refused to publish the report and none of the recommendations were put into effect. The dissemination of the report was consequently limited although a few civil society organisations published the Commission's report on the Internet.⁴³⁵

⁴³¹ FEMI, F. 2005. "the Oputa Panel Report", *Guardian*, 8 January, 2005.

⁴³² the Report Contained the Following Volumes: Summary, Vol 1; Introduction Vol 2: International Context, Vol 3: Research Reports On Human Rights Violation in Military Era, Vol 4; Cases Heard At the Public Hearings, Vol 5: Petitions, Vol. 6: Reparations, Restitutions, Compensations, Vol. 7: Summary, Conclusions, Recommendations, Vol 8: Lists of Legal Counsel and Witnesses At the Public Hearings.

⁴³³ OJO, E.O., 2006. *Human Rights and Sustainable Democracy in Nigeria (1999-2003)*. *Journal of Social Sciences*, 13(1).15-29.

⁴³⁴ Ibid.

⁴³⁵ Centre For Democracy & Development (Cdd) and the Umbrella Organisation Civil Society Forum (Csf) Published the Report On the Internet; Oderemi, Kunle (2005, January 2) "Reopens Death of Mko Abiola, Dele Giwa, Others— Oputa Panel's Report" *Sunday Punch*;

The significant work of the Oputa Commission will be analysed in the next chapter. With the benefit of hindsight, it is appropriate to posit that the vision of the Oputa Commission was a good one. However, the government of the day paid lip service to the Commission and unwittingly undermined its work.

3.4 Conclusion

This chapter has examined human rights violations in Nigeria from a historical perspective. The starting point was to briefly examine the concept of human rights at the universal, regional and national level and where Nigeria was in the realm of human rights at the time of independence in 1960 before the military intervened in January 1966. The reason for this approach was to explore the state of human rights at the time of independence and how human rights culture progressively deteriorated under various military regimes and reached an all-time low during the brutal regime of General Abacha.

The chapter was divided into two parts, organised in a chronological manner. In the first part, the issues and problems of human rights in Nigeria from 1960 to 1999 were discussed. The second part focused on human rights challenges faced by the new democratically elected government after its inauguration on 29 May 1999.

The chapter argued that the reasons for Nigeria's chequered political history were that it inherited a broken society from the British at the time of independence. It was noted that British expansionism sowed the seeds of discord and conflict in Nigeria by bringing together people from different regions, different religions and ethnic affiliations, under one political umbrella. Post-independence first civilian government made no attempt to bridge this divide.

The divisions further depend over time because of bitter struggle amongst contending regional forces for political control. The protracted conflict amongst political forces paved the way for the first military coup in January 1966, which ushered in military rule in Nigeria. The entry of the military into Nigeria politics

Olokojobi Akibu (2004, December 11) "We Will Publish Original Oputa Report – Fayemi Independent".

and governance spelled doom for the country. The military disregarded the constitution, due process and rule of law and ruled by brute military force. The concomitant effects of military rule were violation of human rights and lack of accountability for abuse. The military junta discarded its human rights obligation to its citizens and the commitments it made to international communities by acceding to various human rights treaties and by belonging to multinational organisations such as the United Nations and African Union.

The chapter argued that military intervention in government frustrated attempts to promote democratic rule in Nigeria. Evidence of abuse, mismanagement, and corruption of military leaders undermined the perceived legitimacy of the military's right to intervene to restore order and social equilibrium. Yet those in power justified military intervention based on the country's complex social, political, and economic difficulties. The first military intervention in 1966 was justified by the need to forestall the breakup of the federation of Nigeria. The country was at a tipping point because of difficult political problems it faced as regional factions struggled for political power.⁴³⁶

The chapter posited that the legacy of military rule severely weakened the nation's quest for democracy, as dictatorial military regimes are essentially incompatible with constitutional democracy, rule of law and respect for human rights. Military rule traditionally assumes the conflicting responsibility, both to create laws and to execute them, unchecked by constitutional restraints. In any regime, the overarching aim of the law under military government is to consolidate state power and induce conformity, and the military in Nigeria had discretionary powers to achieve this goal.⁴³⁷

Virtually every military regime in Nigeria promulgated the Constitution (Suspension and Modification) Decree, conferring plenary power on the military to ignore or dismantle existing legal and political institutions. The military regimes introduced several draconian decrees to silence dissent, violate human rights and

⁴³⁶ SARKIN-HUGHES, J., 2004. *Carrots and Sticks: the TRC and the South African Amnesty Process*. Intersentia Nv: Cambridge.

⁴³⁷ BROCKETT, C.D. 1994. 'El Salvador': *the Long Journey From Violence To Reconciliation*. *Latin America Research Review*, Vol. 29, Issue 3, 174-187.

perpetuate power. The junta, who used secret tribunals and draconian decrees to subject them to long jail terms, targeted pro-democracy and human rights activists.

In some cases, military regimes, especially General Sani Abacha's, resorted to political assassinations to silence critics. The courts were not spared as the military introduced decrees, which effectively barred the courts from questioning any actions taken under a decree. This affront on the judiciary showed how Nigeria had degenerated in protecting the rights of its citizens. The implication of the assault on the judiciary was that there was no longer any institution of the State that could act as a defence to protect the rights of Nigerians.

All state institutions were now emasculated leaving the citizens without any protection from abuse. This left pro-democracy and human rights activists to the mercy of roving bands of the military junta's security operatives. The violations that occurred in ensuing contests between contending forces were part of the mess that the Oputa Commission had to deal with. As stated earlier in the chapter, President Obasanjo captured the mood of the nation while inaugurating the Oputa Commission. The former president affirmed that the nation has been brutalised by past events and needed healing and reconciliation.

Although Nigeria is a country rich in oil wealth, successive regimes depleted the nation's resources through greed, mismanagement, and corruption of the political elite. The mining of the nation's oil, instead of enabling a positive transformation towards prosperity, enriched a small minority of the political elite, leaving the vast majority of the population impoverished. This exploitation of oil has been the source of tension between the Nigerian people (particularly in the Niger Delta, where most of the nation's oil reserves are located), oil companies, and the government, the latter of which has often collaborated in corruption and violation of human rights.

Multinational oil companies operating in Nigeria face complex difficulties in their relationships with both the Nigerian government and the communities in which they operate. Successive governments have squandered the oil wealth which the oil companies have mined, hiding the stolen wealth in foreign bank

accounts rather than investing it in education, health and other social investments, and mismanaging the national economy to the point of collapse.

Finally, the second part of the chapter noted that the civilian regime that took power in Nigeria on 29 May 1999 inherited a bruised and divided nation. At the time the regime was sworn in the international reputation of the country was at its lowest ebb. Nigeria was regarded as a pariah nation following several cases of state sponsored assassinations and judicial murder of Ogoni minority rights activists.

This was the motivating force behind the establishment of the Oputa Commission, which the president mandated to heal the wounds of the past and reconcile Nigerians. Despite the daunting challenges of budgetary constraints and poor staffing the Commission rose to the occasion and produced a report. No doubt the Commission's report was a holistic review of the ugly legacies of military rule, responsible for gross human rights violation.

Overall, this chapter has focused more on history and narratives; the intention is to lay a solid foundation for discussions contained in the main foci of the thesis, which is the work of the Oputa Commission and whether the Commission achieved its mandate.

CHAPTER FOUR

INVESTIGATING PAST HUMAN RIGHTS VIOLATIONS IN NIGERIA

4.1 Introduction.

This chapter focuses on the Human Rights Violation Investigation Commission (HRVIC) in Nigeria known as the Oputa Commission.¹ The Commission was a transitional justice mechanism adopted by Nigeria as a country emerging from many years of autocratic military rule and human rights violation.² A number of countries with different outcomes had already exploited the option of the Truth and Reconciliation Commission (TRC) as a transitional justice mechanism. These countries include South Africa, Ghana, Liberia, Sierra Leone, Rwanda and Chile, to mention a few. It is in this regard, therefore, that the Nigerian Government decided on this mechanism to come to terms with the problems of human rights violation perpetrated by the military junta from 1966 to 1999.³ Falola, T. et al. (1991)'s⁴ work provides a rich study on activities of the military junta and attendant human rights violation in the country as discussed in the preceding chapters.

The purpose of this chapter is to take a general view of the role and contribution of the Oputa Commission as a transitional justice mechanism in Nigeria. It specifically interrogates how much truth and reconciliation, the Commission's strengths and weaknesses in its quest for justice to victims of human rights violations in Nigeria, and by extension the unity of the whole country after

¹ [http://: www. Oputa Commission,](http://www.OputaCommission.com) *Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman's Foreword) Presented To President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo GCFR Submitted By Human Rights Violation Investigation Commission. May, 2002 Summary, Conclusions and Recommendations (Accessed 5/5/2017).*

² *A Human Rights Watch Report Described the Carnage in Ogoni As Thus: Troops Entered Towns and Villages Shooting At Random, As Villagers Fled To the Surrounding Bush. Soldiers and Mobile Police Stormed Houses, Breaking Down Doors and Windows With Their Butts. For Moredetails See MEREDITH, M., 2011. the State of Africa: History of the Continent Since Independence. Simon and Schuster: New York.*

³ *http/www.Research Report On the Oputa Commission. Vol.3 (Accessed 5/5/2017).2-3.*

⁴ Vol.3, Op.Cit.

military rule. Additionally, it highlights the utility of the Oputa Commission in a country divided by ethnic politics and religious culture on the one hand, and hegemony and power on the other.

Available records show that the lopsided nature of the 1947 Constitution pitched the Nigerian State into ethnic and regional politics in an environment divided along religious lines and hegemony.⁵ By 1960, it became abundantly clear that independent Nigeria would not easily wrangle itself out of regional politics and domination. Thus, the first signs were evident in the elections of 1964 and the population census results, which caused crisis and violent attacks in Western Nigeria and other parts of the country. Evidence shows that the rejection of the results centred on the fact that census figures and demography in Nigeria determine resource allocation to the regions and appointments at the federal level.⁶

Therefore, the military took power in the hope that they would correct the ills of the society and perhaps return the country to democratic rule. Ironically, the military promulgated decrees that gagged the press and human rights. Thereafter, the military became corrupt and embarked on wide-ranging transition politics, which led to the emergence of one regime after another.⁷ It reached its high watermark during the administration of Generals Buhari, Babangida, and Abacha when Nigeria became isolated from the Commonwealth of Nations and her European partners.⁸

These regimes became notorious for their human rights violations and politics of deception in the intervening years leading to democratic rule. These, are discussed in the third category of works outlined already in chapter one and three which include: Annual Report (1997), A CLO Report on the State of Human

⁵ EBEGBULEM, C. 2011. *Ethnic Politics and Conflicts in Nigeria: Theoretical Perspective*.

⁶ MEREDITH, M., 2011. *the fate of Africa: A history of the continent since independence*. Hachette UK.Op.Cit. 75-77.

⁷ *For Details of Nigeria's Coup Culture*, See SIOLLUN, M., 2009. *Oil, politics and violence: Nigeria's military coup culture (1966-1976)*. Algora Publishing.Op.Cit.

⁸ ADENIYI, O., 2005. *the Last 100 Days of Abacha: Political Drama in Nigeria Under One of Africa's Most Corrupt and Brutal Military Dictatorships*. Bookhouse Company.Op.Cit. 211-236. Also See FAWOLE, W.A. 2003. *Nigeria's External Relations and Foreign Policy*, Op.Cit.210-211.

Rights in Nigeria,⁹ Annual Report (1998), A CLO Report on the State of Human Rights in Nigeria,¹⁰ and de St. Jorre (1972), The Nigerian Civil War¹¹, that The Human Rights Violation Investigation Commission Report (May 2002),¹² and Shriver (1995)'s, An Ethic for Enemies: Forgiveness in Politics¹³ were also drafted out of rights violation concerns in Nigeria. These events prompted civil society groups and their coalition affiliates to oust the military from power.¹⁴ The attempt to move the country forward eventually led to the inauguration of the Oputa Commission to resolve the crisis created by military dictators in Nigeria.

It has already been pointed out (see Chapters Two and Three) that human rights and political instability in the country prior to General Sani Abacha's death was not only frightening but also worrisome.¹⁵ The regime had been the subject of criticism by the international community for its human rights violations and autocratic tendencies antithetical to modern development.¹⁶ Thus it was suspended from the Commonwealth of Nations and sadly for the execution of Ken Saro-Wiwa under a flawed judicial process.¹⁷

Nigeria therefore was on the verge of disintegration, as the country had been economically sanctioned and isolated by European friends and partners before the death of General Abacha.¹⁸ It was the sequence of events during his regime that triggered the demand for a 'truth and reconciliation commission' to investigate human rights violations under military rule.

Available evidence also reveals that prolonged military rule in Nigeria brought about a progressive rise in gross violation of human rights which

⁹ Ibid.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Ibid.

¹⁴ ISAAC, A. 2013. *Military Regimes and Nation Building in Nigeria, 1966-1999*. *African Journal of History and Culture*, 5(7).138-142.

¹⁵ ROBINSON S. 1999, "Olusegun Obasanjo", *Time Magazine*, December 27.

¹⁶ ONYEBGULA, S. 2007. *the Human Rights Situation in Nigeria Since the Democratic Dispensation; U.S. Department of State (1999) Nigeria Country Report On Human Rights Practices For 1990, Bureau of Democracy, Human Rights, and Labour*, BIRNBAUM, M. 1995. *A Travesty of Law and Justice: An Analysis of the Judgement in the Case of Ken Saro-Wiwa and Others*. Article 19.

¹⁸ MATHEWS, M.P., 2002. *Nigeria: Current Issues and Historical Background*. Nova Publishers: New York.

ultimately led to the demand for some form of accountability for past abuse.¹⁹ Nigeria's chequered colonial past left a legacy of discrimination based on ethnicity and religion, and therefore an overall assessment of how much truth and reconciliation the Commission achieved is critical to this debate. The challenges of ethno-religious discord were exacerbated as each of the dominating ethnic groups sought to entrench its hegemony over the others.²⁰ It was unhealthy rivalry for control of central government and the nation's resources that led to prolonged military rule, which aggravated the human rights situation in Nigeria. Indeed, successive military regimes also compromised state institutions, effectively using them to flagrantly violate the human rights of Nigerians while military leaders and their acolytes perfected the looting of the nation's resources.²¹

At first, the efficacy of the Oputa Commission was in doubt from different quarters, particularly from civil society and affiliates, political observers and academia. This is argued on the grounds that the military elite could obstruct justice since they had just stepped aside from governance, accumulation of wealth and personal gratification.²² It was also believed that the present composition of the Nigerian nation had not yet matured for such a process because of ethnic politics and regional sentiment of godfatherism.²³ Further, the issue of the mode of transitional justice mechanism that Nigeria should adopt at the end of the military government was not sufficiently discussed. The Obasanjo's regime just

¹⁹ CAMPBELL, E., 2001. *Days of Atonement: Searching For Justice in Nigeria*, Doctoral Dissertation, These Times.

²⁰ OJO, J.S. AND FRANCIS, F.O., 2014. *Military Governance and Civil War: Ethnic Hegemony As A Constructive Factor in Nigeria*. *Global Journal of Human-Social Science Research*.

²¹ HUMAN RIGHTS VIOLATION INVESTIGATION COMMISSION, 2007. *HRVIC Report, Conclusions and Recommendations, Synoptic Overview*. Unpublished, Available From <http://www.NigerianMuse.Com/NigeriaWatch/Oputa/> (Accessed, 19 February 2017).

²² "Chairman's Forward" Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*. 2.

²³ 'Godfatherism' Is Both A Symptom and A Cause of Violence and Corruption That Together Permeate the Political Process in Nigeria.... Godfathers Are Only Relevant Because Politicians Are Able To Deploy Violence and Corruption and Impunity To Compete For Office in Contests That Often Effectively, and Sometimes Actually, Exclude Ordinary Nigerians. For Moredetails See. ABDULQUADIR, I.A., YUSUF, I.A., OBA, A.A., IJAIYA, H.O., & AMOLOYE-ADEBAYO, A.O. eds. 2013. *Corruption and National Development: Proceeding of the 46th Annual Conference of the Nigerian Association, Held April 22-26 At the University of Ilorin*. 622.

announced the Commission without national debate and clear understanding of the enormity of the work of a truth and reconciliation commission.

Notwithstanding these initial misgivings, the government went ahead and announced the establishment of the Oputa Commission. The announcement coincided with one of the highlights of the maiden address of President Olusegun Obasanjo when he took over the reign of power on 29 May 1999. President Obasanjo in his speech pledged to fight the twin evils of institutionalised corruption and human rights violations, which characterised Nigeria's experience during the era of military rule.²⁴ The latter was already discussed in chapter two and three from Ojiako (1979)'s, *13 Years of Military Rule 1966–1979*.²⁵

In light of the above discussion, this chapter examines the evolution of the Oputa Commission, membership of the amendment to the Commission,²⁶ and the mandate and terms of reference of the Commission; all previously evidenced in chapter one and two from the rich works of commended In the Annual Report (1997), A CLO Report on the State of Human Rights in Nigeria,²⁷ Annual Report (1998), A CLO Report on the State of Human Rights in Nigeria,²⁸ and de St. Jorre (1972), *The Nigerian Civil War*.²⁹ The Human Rights Violation Investigation Commission Report (May 2002),³⁰ and Shriver (1995)'s, *An Ethic for Enemies: Forgiveness in Politics*.³¹

The methodology and process of the work of the Commission, its achievements and evaluation will be discussed. Insights into these issues will offer knowledge about the work of the Oputa Commission and evaluate its efficacy as a transitional justice mechanism. The Commission was a child of circumstance and was not in the interests of everyone. Consequently, the inability of the

²⁴ ÀlNÁ, R.O., 2010. *Nigeria's Human Rights Violation Investigation Commission (HRVIC) and Restorative Justice: the Promises, Tensions and Inspirations For Transitional Societies*. *African Journal of Criminology and Justice Studies*., 4(1), 55.

²⁵ Ibid.

²⁶ HUMAN RIGHTS VIOLATION INVESTIGATION COMMISSION, 2007. *HRVIC Report, Conclusions and Recommendations, Synoptic Overview*. Unpublished, Available From [http://www. Nigerianmuse.Com/Nigeriawatch/Oputa/](http://www.Nigerianmuse.Com/Nigeriawatch/Oputa/), Accessed, 19.

²⁷ Ibid.

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

government to release the report, as would be discussed shortly, shows on the one hand that the Oputa Commission was not the right model for the country, while on the other hand, it explains the fact that the problems of ethnic politics and hegemony were deeply rooted in the country's polity.

This chapter argues that even though the government of President Obasanjo did not officially release the report of the Oputa Commission and implement its recommendations; it made great strides to unearth the human rights situation in the country during the protracted military rule.³² Information on such rights violations then, was discussed from the works of Coleman (1958)³³ and of Nnoli (1978)³⁴. Most of the sad events of the past hitherto discussed in hushed tones were publicly discussed on national television and in media outfits.³⁵ Some victims and their families faced alleged perpetrators in public and were able to learn what happened to their loved ones.³⁶

The revelation of the truth to these families had a cathartic effect on them and helped bring closure and healing for some. The Oputa Commission's report represents the undisputed official truth of past events and is a reference point for future attempts toward accountability and reconciliation. The Oputa Commission essentially forged the foundations that will underpin the transitional justice debate in Nigeria in the future.³⁷ It will also remain a reference point and a mine of information for researchers on peace building and conflict resolution, as well as nations emerging from human rights violation and war.³⁸

³² HUMAN RIGHTS VIOLATION INVESTIGATION COMMISSION, 2007. *HRVIC Report, Conclusions and Recommendations, Synoptic Overview*. Unpublished, Available From <http://www.Nigerianmuse.Com/Nigeriawatch/Oputa/>, Accessed, 19. February 2017).

³³ Ibid.

³⁴ Ibid.

³⁵ IKHARIALE, M., 2002. *the Oputa Reports: An Unfinished Job*. Available At http://www.Academia.Edu/721996/the_Oputa_Reports_An_Unfinished_Job.

³⁶ YUSUF, H.O. 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286.

³⁷ Human Rights Violation Investigation Commission, 2007. *HRVIC Report, Conclusions and Recommendations, Synoptic Overview*. Unpublished, Available From <Http://Www.Nigerianmuse.Com/Nigeriawatch/Oputa/>, Accessed, 19 March 2017).

³⁸ YUSUF, H.O., 2013. *Human Rights Violation Investigation Commission, the Oputa Panel (Nigeria)*. Lavinia Stan, Nadia Nedelsky (eds.) *Encyclopaedia of Transitional Justice*. Cambridge University Press: Cambridge, 161-165.

Therefore, the role of the Oputa Commission in the political history of Nigeria cannot be overlooked. It succeeded to a large extent in unearthing human rights violations and the perpetrators in Nigeria. It may not have achieved total success for Nigerian peoples and regions, but it made a great impact in resolving the community crises of ethnic groups and national unity.³⁹

Shortcomings in the Commission's work reflected the problems confronting the nation and this is why some scholars contend that it was not the right model for Nigeria, particularly in the dissolution of ethnic politics, hegemony and imbalance in the country. It is therefore important to look at the evolution of the Oputa Commission and why it was established, to solve the problems of human rights violations caused by military rule.

4.1.1 Evolution of the Oputa Commission

The Oputa Commission was a truth and reconciliation commission established to address human rights violation by the military regime in Nigeria from 1966 to 1999.⁴⁰ The human rights issues were previously spelt out and discussed in the preceding chapters in the works of Miners (1971),⁴¹ Elaigwu (1985)⁴² and in History of the Nigerian Army 1863–1992 (1992),⁴³ Uwechue (1971),⁴⁴ and Ojiako (1979).⁴⁵

When Nigerians heralded the coming of the military in 1966 due to undemocratic behaviour of the politicians of the first republic, little would they know that military rule would transform itself into prolonged transition politics with attendant abuses of human rights and dictatorial culture? It was the series of events during the military regime in which perceived and potential enemies were

³⁹ ALBERT, I.O., 2004. *Oputa Commission and the Intra-Ogoni Reconciliation Process. Nigeria's Struggle For Democracy and Good Governance: A Festschrift For Oyeleye Oyediran*, 349-374.

⁴⁰ *Useful Information in* SIOLLUN, M. 2009. *Oil, Politics and Violence*, *Op.Cit.* Also See OJIAKO, O.O. 1980. *Thirteen Years of Military Rule, 1966-79*. Daily Times Nigeria Ltd: Lagos. 7-18.

⁴¹ Ibid.

⁴² Ibid

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

killed and incarcerated without trial that led to the Oputa Commission. The period of military rule in Nigeria witnessed untold repression and gross violation of basic human rights for Nigerians.⁴⁶ Thus the report of the Commission states:

“...Clearly, the military are to be held accountable for gross human rights violation in the country, during the period under review. This is exemplified by the cases of torture at the Inter centre, Directorate of Military Intelligence (DMI) headquarters in Lagos and Jos Prison by the military. All the other prisons in Nigeria failed so far below the standards of the United Nations that they became torture centres”.⁴⁷

The most dastardly acts that occurred during the period were killings that pointed to either direct involvement or complicity of the State and its security agencies.⁴⁸ Therefore the years of the junta were characterised by repression of political opposition, civil society groups and the media. Thus, respect for rule of law and due process was abandoned for reckless abuse of power. The press reported several cases of people being harassed, detained without trial, tortured, extra-judicially murdered and sometimes forcibly displaced from their homes.⁴⁹ These violations by the military were aimed at perpetuating power and fulfilling their endless transition politics. Writing in the same vein, Okonta and Douglas (2001) note that even in the oil rich Niger Delta, environmental pollution,

⁴⁶ See *Annual Human Rights Reports By Civil Liberties Organisation, Constitutional Rights Project, and Committee For the defence of Human Rights, Amnesty International, Human Rights Watch and the United States Department of State Annual Human Rights Report On Countries*. Also See ABIODUN, J.D., & IBANGA, M. E. 2011. *Human Rights Protection in Nigeria: From Rhetoric To Pragmatic Agenda*, *African Journal of Law and Criminology*, 1(2), 70-81.

⁴⁷ HUMAN RIGHTS VIOLATION INVESTIGATION COMMISSION (2002). *Summary, Conclusions and Recommendations of the Human Rights Violation Investigation Commission*, May, Para. 90.

⁴⁸ See *Annual Human Rights Reports By Civil Liberties Organisation, Constitutional Rights Project, Committee For the defence of Human Rights, Amnesty International, Human Rights Watch and the United States Department of State Annual Human Rights Reports On Countries; Human Rights Violation Investigation Commission (2002). Summary, Conclusions and Recommendations of the Human Rights Violation Investigation Commission*, May, Paras. 101-103.

⁴⁹ See *Annual Human Rights Reports By Civil Liberties Organisation, Constitutional Rights Project, and Committee For the defence of Human Rights, Amnesty International, Human Rights Watch and the United States Department of State Annual Human Rights Reports On Countries*.

degradation and wanton destruction of the ecology, because of oil exploration activities, were a common phenomenon.⁵⁰ Since the 1980s, successive military governments had enacted decrees aimed at curtailing the freedom of fundamental rights and liberties by the people to silence them. This experience continued till the extrajudicial killing of Ken Saro-Wiwa and his Ogoni kinsmen.⁵¹

Since the exit of military dictators, the Ogoni question remains a national discourse in the country. Where did the country derive its roots of human rights violations and incarceration without trial? The answer is not so far-fetched, because the available literature suggests that the overthrow of a democratically elected government on January 15, 1966 introduced decrees by which certain sections of the Nigerian Constitution that dealt with fundamental rights of individuals were suspended.⁵²

Arguably the decrees were enacted to give the military unlimited powers to unleash mayhem and incarcerate those who opposed military rule and campaigned for human rights. Perhaps, it was also published to enable them to control the resources of the nation if they desired, without handing over power to a democratically elected government.

In this regard, it would be appropriate to assert that all military regimes carried out gross human rights violation during their tenure because they all worked with decrees.⁵³ It is also safe to state that this abuse to varying degrees was severe because the Gowon and Obasanjo regimes did not commit as many atrocities as those of the Buhari, Babangida and Abacha administrations.⁵⁴ The effects of the horror and stagnation these latter regimes caused the nation far outweighed those of Gowon and Obasanjo's regimes. The image of the country

⁵⁰ OKONTA, I., & DOUGLAS, O. 2001. *Where Vultures Feast: Shell, Human Rights and Oil in the Niger Delta*. Sierra Club and Crown Publishers: New York; CONSTITUTIONAL RIGHTS PROJECT. 1999; *Land, Oil and Human Rights in Nigeria's*. Delta Region. Constitutional Rights Project: Lagos, 13-20.

⁵¹ FAWOLE, W.A. 2003. *Nigeria's External Relations and Foreign Policy Under Military Rule, 1966-1999*. Obafemi Awolowo University Press: Ile Ife. 189.

⁵² Decree No. 1 of 1966 (*Constitution Suspension and Modification Decree*).

⁵³ NWABUEZE, B.O., 1992. *Military Rule and Constitutionalism in Nigeria*. Spectrum Law Pub: Ibadan.

⁵⁴ BABAWALE, T., 2006. *Nigeria in the Crises of Governance and Development: A Retrospective and Prospective Analyses of Selected Issues and Events, Education, Labour and the Economy*. Political and Administrative Resource Center: Lagos.

declined as the June 12, 1993 election was annulled under Babangida; the killing of Kudirat Abiola and the murder of Ken Saro-Wiwa and his Ogoni kinsmen, including Pa Rewane, occurred during the Abacha administration.⁵⁵ When the military seized power in January 1966, it promulgated the State Security (Detention of Persons) Decree of 1966.⁵⁶ This legislation ordered the detention of named persons who were considered a threat to national security.

This was closely followed by the Armed Forces and Police (Special Powers) Decree No. 24 of 1967.⁵⁷ This decree was considered necessary because of the Nigerian Civil War. Both decrees remained in force until 1979 when the Public Security (Detention of Persons) Decree No. 1 of 1979 repealed the 1967 Decree.⁵⁸

In continuing the military tradition, the regime of General Mohammadu Buhari that had overthrown the civilian government in 1983 enacted the State Security (Detention of Persons) Decree No. 2 of 1984. This was a re-enactment of the 1966 Decree that allowed the regime to indefinitely detain persons without recourse to the law courts.⁵⁹ Buhari further detained several politicians and targeted the press with the notorious Public Officers (Protection against False Accusations) Decree No. 4 of 1984.

General Ibrahim Babangida on assuming power abrogated Decree No. 4 and pretended to pursue a human rights agenda. According to Adejumobi and Momoh (1995), it was not long before the regime relapsed and made effective use of all the available anti-people decrees enacted by Babangida's predecessors to target the media, human rights and pro-democracy activists, students, and the labour union.⁶⁰ Eventually, General Sani Abacha's regime surpassed previous

⁵⁵ ONUOHA, B. AND FADAKINTE, M.M., 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press. Op. Cit.

⁵⁶ *the State Security (Detention of Persons) Decree of 1966 Provided For the detention of Up To Six Months Under Conditions "As May Be From Time To Time Be Imposed in Respect of Person Duly Convicted of An Offence By A Court of Law". the detainee Had A Right To Make Representations To the Federal Military Government and Government Had the Discretion To Appoint A Tribunal To Review the detention. See Articles 1 and 3, State Security (Detention of Persons) Decree of 1966.*

⁵⁷ OJIAKO, O.O. 1980. *Thirteen Years of Military Rule, 1966-79*. Daily Times Nigeria Ltd: Lagos, 7-18.

⁵⁸ Ibid.

⁵⁹ OJIAKO, O.O. 1980. *Thirteen Years of Military Rule, Op.Cit.*

⁶⁰ ADEJUMOBI, S. ed., 2010. *Governance and Politics in Post-Military Nigeria: Changes and Challenges*. Op. Cit.

regimes in terms of gross violation of human rights of Nigerians. The regime carried out widespread repression of human rights advocates. Extrajudicial killings, torture, assassination, imprisonment and general harassment of critics and opponents were the hallmark of his administration.⁶¹ His cruel tactics were discussed in chapters two and three and are made recourse to in Ojiako (1979)'s, *13 Years of Military Rule 1966–1979*.⁶²

The role of civil society and its coalition partners during the period cannot be overlooked. They played a major role in reminding the government of the need to officially investigate human rights violations that occurred from 1966 to 1999 in Nigeria. The initial efforts of civil society, mainly human rights organisations both within and outside the country to document abuse and publish in their annual human rights reports exposed the atrocities perpetrated in secret.⁶³ The report brought to the public domain various gross human rights violations that had occurred in the Abacha years. The effect of this development for the outside world was horrific.

Therefore, efforts to reveal the violation of the Abacha junta was intensified in October 1997, when the Centre for Democracy and Development provided technical expertise and administrative assistance to several Nigeria pro-democracy and human rights groups to hold a public hearing on human rights violations in the country. The event was held in London and presided over by two British legal luminaries, Mr Geoffrey Bindman, QC and Dr Paul Okojie. The hearing attracted a huge response and those who had witnessed or suffered human rights violations testified.

As a follow, on to this initiative the Centre for Democracy and Development carried out research on truth telling and accountability for past human rights violations with reference to the truth telling process in South Africa.

⁶¹ For Further Reading See U.S. Department of State Nigeria Country Report On Human Rights Practices For 1997 (Published By the Bureau For Democracy, Human Rights and Labour, January 30, 1998). See Also Constitutional Rights Project, CPR Annual Report (Human Rights Practices in Nigeria, July 1997 – September 1998).

⁶² Ibid.

⁶³ See Annual Human Rights Reports By the Civil Liberties Organisation, Constitutional Rights Project, and Committee For the Defence of Human Rights, Amnesty International, Human Rights Watch and the United States Department of State Annual Human Rights Report On Countries.

This research led to the publication of a manual that could be adapted to address incidences of such abuse that occurred in the West Africa sub-region.⁶⁴ The effect of this gathering energised civil society groups and pro-democracy activists to effectively remove the military junta from power.

The effect of the hearing on the Nigerian masses was encouraging, as they believed that their plight would be given attention sooner than later. Immediately after the democratic space opened in Nigeria following the sudden death of the military ruler General Sani Abacha in 1998,⁶⁵ human rights organisations, civil society groups and the media formed a coalition to hold a public hearing on human rights violations that had occurred under the military regimes of Generals Babangida and Abacha. The public hearing, purely a civil society initiative, was intended to pressure or persuade the government to institute a formal process to investigate past human rights violations.

Indeed, the rationale behind the setting up of the Commission was for Nigerians to come to terms with developments in their political history including: colonial inheritance; collapse of the first republic; the civil war; the inherent dilemma of military rule, ethnic and prebendal politics; the annulment of June 12, 1993 presidential elections; the use of political assassinations, torture and judicial murder as deliberate instruments of state policy to eliminate and harass perceived opponents and pro-democracy activists; to confront the past in order to build the future; and trends and developments in the international community which prescriptively universalised human rights and criminalised gross violation. In this way rulers and perpetrators of such gross violation are held accountable by the international community.⁶⁶

The latter was outlined in chapters one and two from the works of Akinyeye, Y., (ed.) (2003)⁶⁷, but central to this study was Solomon O. Akinboye's

⁶⁴ *the Research Led To the Publication of A Manual Called "Seeking Truth & Justice: Lessons From South Africa" By Sonny Onyegbula (CDD, Occasional Paper Series, No 3, June 1999).*

⁶⁵ MEREDITH, M., 2011. *the State of Africa: A History of the Continent Since Independence*. Simon and Schuster. Op. Cit.

⁶⁶ DON PEDRO, I. (1999, December 31) "Great Expectations and Sundry Disappointments". *the Guardian*, .15.

⁶⁷ Ibid.

Nigeria-South Africa Relations in the 20th Century: A Case of Symbiosis and Reciprocity in the former's book.

It could be safely argued that since the military made an incursion into politics in Nigeria, ethnic violence has remained rife, especially in North-Central Nigeria and the oil rich Niger Delta regions.⁶⁸ On the other hand, religious conflicts between Moslems that dominated Northern Nigeria and the Christian dominated South have also left thousands of people dead and properties worth millions of Naira lost.⁶⁹ Therefore, it is the concomitant effect of the above scenario that witnessed many years of gross human rights violation and collapse of rule of law and due process. Fundamental human rights were recklessly violated, and due process of law was completely non-existent during military rule, leading to stagnation and underdevelopment.

Due to the findings, this section has revealed that human rights violation became a problem in the years of military rule as many people suffered one form of violation or another.⁷⁰ Some other persons perceived as enemies of the regime were imprisoned, tortured or murdered.⁷¹ The role of civil society and coalition groups was significant during this period. The pressure mounted by these institutions led to the Oputa Commission.⁷²

This guaranteed impunity on the part of security agents of the State, and this phenomenon remained until June 8, 1998 when General Sani Abacha suddenly died.⁷³ His death brought with it a ray of hope for the Nigerian nation, as his successor, General Abdul Salam Abubakar promised in his maiden address to return the country to democratic rule. Olusegun Obasanjo won the Nigerian

⁶⁸ ADENIYI, O. 2005. *the Last 100 Days of Abacha*, Op.Cit. 228.

⁶⁹ MASON, B., & AND TALBOT, C. 2000. *Religious Conflicts in Nigeria*. Montreal: International Committee of the Fourth International. [Online] Available At : <http://www.Wsws.Org/Articles/2000/Feb2000/Nige-F28.Shtml>.

⁷⁰ See Annual Report 1998 A Civil Liberties Organization Report On the State of Human Rights in Nigeria, 123-138.

⁷¹ See Annual Report 1997 A Civil Liberties Organization Report On the State of Human Rights in Nigeria, 20-21. Also See Annual Report 1996 A Civil Liberties Organization Report On the State of Human Rights in Nigeria; Annual Report 1995 A Civil Liberties Organization Report On the State of Human Rights in Nigeria.

⁷² FAWOLE, W.A., 2003. *Nigeria's External Relations and Foreign Policy Under Military Rule, 1966-1999*. Obafemi Awolowo University Press Ltd: Ile Ife. 211.

⁷³ MEREDITH, M. 2011. *the State of Africa: A History*, Op.Cit.579.

election and he was sworn in as a democratically elected president on May 29, 1999.⁷⁴ In a bid to address human rights violations caused by the military regime, the Oputa Commission was established, but this model later became problematic and was challenged in the Supreme Court, regarding its validity in the Nigerian Constitution. Thereafter it became clear that truth and reconciliation would be difficult to achieve.

4.1.2 Membership of the Commission

Membership of the Commission was drawn from across the country to ensure equitable representation to avoid of complaints of marginalisation, which was part of the problem, the Commission intended to resolve. The Oputa Commission was made up of the following distinguished and eminent Nigerians, with rich experience in public affairs: Hon. Justice Chukwudifu Oputa (rtd) (Chairman), Rev Mathew H. Kukah, Mrs Elizabeth Pam, Abubakar Ali Kura Michika, Mallam Mamman Daura and Dr Tunji Abayomi (members) and Mr T.D. Oyelade (Secretary).⁷⁵ The broad ethnic representation and perceived patriotism amongst the members of the Commission inspired confidence among Nigerians in their ability to do justice and equity. In this regard Professor Eno Ikpe notes of the members of the Commission, they were “detribalised Nigerians” who were not tainted by corruption.⁷⁶

Despite this approval, the process of appointment of members as well as the composition of Commission staff was flawed. There was no consultation with civil society or other critical sectors of the society before members were appointed. Similarly, most members had no prior knowledge of human rights or

⁷⁴ Ibid. 579-580.

⁷⁵ HUMAN RIGHTS VIOLATION INVESTIGATION COMMISSION, 2007. *HRVIC Report, Conclusions and Recommendations, Synoptic Overview. Unpublished, Available From <http://www.Nigerianmuse.Com/Nigeriawatch/Oputa/>, Accessed, 19.28. Also See [Http://:Www.the Cable Ng/Retired-Justice-Oputa](http://www.theCableNg/Retired-Justice-Oputa) (Accessed 5/5/2017); Ojewale, O. (1999, July 12) “Gains of June 12 Struggle”. *News Watch*. Vol.30, No.1; OLURUNNIMBE, F. (2001, November 15) “Nigeria: the Yoruba At Oputa Panel”. *This Day Newspaper*, 1-2; Human Rights Violation Investigation Commission, 2011. *Summary Recommendations of Oputa Panel Report*. *Biafran War Database*.*

⁷⁶ Interview With Eno Ikpe, 60 Years, Professor of History, University of Uyo, Akwa-Ibom State 23/4/2017.

the transitional justice mechanism, as they were mere spectators throughout the duration of the Commission's tenure. Further, all staff were initially seconded from the civil service and had no first-hand knowledge or experience of the workings of TRCs. These were some of the factors that affected the efficiency of the Oputa Commission and undermined its efforts to achieve desired results.

After their inauguration, a special retreat was organised for members of the Commission to share knowledge with experts from other countries, since this would help them in their work. At the retreat, it was pointed out that the number of commissioners (totalling seven) was too few to carry out the mandate of the Commission and therefore membership should be expanded. Also recommended was the creation of departments and offices situated in the six geo-political zones in the country to be headed by a commissioner and regional manager.

The expansion of the Commission would have helped to strike a balance between top-notch professional staff and political appointees. This would have also helped the Commission to function effectively with an expanded mandate. In contrast, the SATRC, from which the Oputa Commission drew extensive ideas, consisted of seventeen commissioners, appointed through a competitive and consultative process, which involved civil society and relevant sectors. The extensive consultation and transparent process in the appointment of members of the SATRC shows the importance of an independent, representative, and competent truth and reconciliation commission (TRC) as a precursor to guaranteeing the rights of victims to truth, justice, and reparations. Even though the Oputa Commission claimed inspiration from the SATRC, the creators of the Oputa commission did not include in its enabling law the attributes that made the SATRC the success they applauded. These initial blunders, which the Obasanjo's administration did not rectify, were a minus to the Oputa Commission.

In his commentary on the Oputa Commission, Professor Yadudu criticised the religious composition as the Commission had only one Moslem commissioner.⁷⁷ This was not appropriate because religion is a contentious issue in a volatile country such as Nigeria, and government ought to have considered

⁷⁷ YADUDU, A.H., 2001, 'What Is Wrong With Oputa Panel?' (Part II) *Amana Online* [Online]. Available http://www.Amanaonline.Com/Articles/Art_13.Htm.

the pros and cons before appointing commissioners. The duration of the Commission was from June 14, 1999 to May 2002,⁷⁸ and this was a considerable period to achieve results. However, it should be noted that when the Commission was established, it was given three months to complete its work, which was later extended because of the enormity of the tasks at hand and consultations from different regions.⁷⁹

It was not long before four members initially appointed to serve on the Commission were replaced for undisclosed reasons. The members replaced were Abubakar Ali Kura Michika, Mallam Mamman Daura, Dr. Tunji Abayomi and Mr. T.D. Oyelade (Secretary).⁸⁰ They were replaced by Dr. Mudiaga Odje, SAN, OFR (member), Barrister Bala Ngilari (member), Alhaji Lawal Bamali (member), and Mr N. B. Dambatta, (secretary).

The instrument for appointing the Oputa Commission was also amended and it was renamed The Judicial Commission of Inquiry for the Investigation of Human Rights Violation. It also contained amendments to the initial terms of reference of the panel. The President was asked to consider upgrading the panel to a Human Rights Abuse and Reconciliation Commission, with powers to command and enforce the attendance of witnesses. Significant amendments were:

(I) the reference in terms of references (a) and (b) in the amended instrument to “gross violations of human rights...,” as opposed to the more specific reference to “...all known or suspected cases of mysterious deaths and

⁷⁸ HUMAN RIGHTS VIOLATION INVESTIGATION COMMISSION, 2007. *HRVIC Report, Conclusions and Recommendations, Synoptic Overview*. Unpublished, Available From <http://www.nigerianmuse.Com/Nigeriawatch/Oputa/>, Accessed, 19. February 2017). Details in Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations(Including Chairman’s Foreword)*. Presented To President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo GCFR Submitted By Human Rights Violation Investigation Commission, May 2002 Summary, *Conclusions and Recommendations* (Accessed 5 May 2017), 28-40.

⁷⁹ PILAY, S. & SCANLON, H. 2007. “Peace Versus Justice? Truth and Reconciliation Commissions and War Crime Tribunals in Africa”. *Policy Advisory Group Seminar Report*. Cape Town, South Africa, 17-18 May 2007, 20.

⁸⁰ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman’s Foreword)*. Presented To President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo GCFR Submitted By Human Rights Violation Investigation Commission, May 2002 Summary, *Conclusions and Recommendations* (Accessed 5 May 2017), .28-30.

assassinations or attempted assassinations...” in terms of reference (I) and (ii) in the original terms of reference.

The request for upgrading the panel was probably to make it assume acceptable international standards and mandate for a TRC. Perhaps, it was also intended to give credibility to their task, findings and recommendations.⁸¹ But, more importantly, it was to provide greater latitude in the Commission’s task of investigating and interrogating victims and suspects without hindrance. To what extent did the Commission’s terms of reference help to fulfil its mandate and objectives? This question will provide knowledge about the Commission’s work, since it is obvious that the scope of the mandate and terms of reference would lead to the question of how much truth and reconciliation the Oputa Commission achieved.

4.1.3 Interpretation of the Commission’s mandate⁸²

An interpretation of the Commission’s mandate will provide knowledge on the powers and authority conferred on the Oputa Commission. This section will elaborate on the mandate, and salient issues and debates in the public domain that appear to have undermined the Commission’s work, especially the refusal by three former Heads of State and their lieutenants to appear before the Commission.

Many questions arise. Was the Commission’s mandate adequate for the task? Was the TRC the right model for Nigeria, given that the country had struggled with balance of power and ethnic politics issues for some time? Did the Commission succeed within the ambit of its mandate and to what extent did it bring peace to the Nigerian State? The answers to these questions are imperative because they will provide insights into the work of the Oputa Commission. The

⁸¹ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman’s Foreword)*, Op.Cit. 30-31.

⁸² *Ibid.* Recommendations, Op.Cit.

objectives of the Commission determine its mandate, as articulated by its Chairman during public hearings, which include:

1. To heal the wounds of the past;
2. To achieve reconciliation based on Truth and knowledge of Truth; and
3. To restore harmony in our country.⁸³

From a broad perspective, the mandate of the Commission was to ascertain the causes, nature, and extent of human rights violations or abuse committed between January 15, 1966 and May 28, 1999. The Commission was established under the Tribunals of Inquiry Act, Chapter 447, and Laws of the Federal Republic of Nigeria.⁸⁴

Beginning with the above listed questions, one can contend that the Commission's mandate was adequate for the task before it, because it had the blanket powers to invite victims and perpetrators alike, irrespective of stature. It was also given the powers to effect arrest to ensure compliance⁸⁵ but it never exercised such authority, perhaps due to the objective of achieving peace in the country. Arguably, the mandate was adequate for the task as three former heads of state and their cronies were invited to account for human rights violations under their regimes, though they took cover under the pronouncement of the Supreme Court of Nigeria. Therefore, the efficacy of the Oputa Commission has been challenged regarding how much truth and reconciliation it achieved.

Similarly, there was the question of whether the Commission was the right model for Nigeria. The answer is in the negative, considering the power of hegemony and religion that characterised the regions throughout. It is also instructive to note that those who held on to power did not surrender it easily because it is regarded as a birth right. A coalition of foreign and local mediators appointed to unify the country would have been the best solution, but the idea would have been opposed by those in power, including eminent politicians and the oligarchy that stood to benefit from the situation. They would draw on shame

⁸³ Report of Oputa Commission, "Introduction" To Chapter 1.

⁸⁴ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit.

⁸⁵ Ibid.

and in extreme cases paint a picture of international law to stop the involvement of international participants. It should be recalled that Nigeria's ethnic division was created by colonialists and would easily be resolved through international diplomacy. This is the only way forward otherwise secession would be achieved by various ethnic groups through war and human rights violations. Reconciliation, on the other hand was achieved for warring communities, especially the Ohaneze and Arewa, Modakeke and Ife, Agulere and Umulere and Lagos State and Maroko indigenes. This feat was commendable considering the effects of rivalry and war over the years.

What was the nature of gross violation investigated by the Commission and how was the hearing organised? The Commission received more than 10,000 petitions from the public, most of which fell under one or more of the following broad categories: (a) murder/assassination, (b) abduction, (c) torture, (d) harassment and intimidation, (e) prolonged detention (with or without trial), (f) employment related cases, (g) contractual and business-related cases, and (h) attempted assassination.⁸⁶

It is important to note here that out of the 10,000 petitions received by the Oputa Commission; about 9,000 were petitions from Ogoni land alone. The Ogoni petitions were coordinated by the umbrella body of Ogoni people called Movement for the Survival of Ogoni People (MOSOP).⁸⁷ The Commission eventually consolidated all the Ogoni cases into one case. Eventually, about 150 cases were heard, while most others were sent to other government institutions for adjudication. The chairperson of the Commission stated clearly that the first task that the Commission undertook was to clarify the petitions that the Commission received and identify those that amounted to gross human rights violations. The Commission then decided to conduct public hearing only for those cases that it identified as amounting to gross human rights violations.⁸⁸ Such

⁸⁶ Report of Oputa Commission, "Introduction" To Vol.1, Chapter 1, 38-41.

⁸⁷ Interview With Ledum Mittee, Former President of Mosop On 02 April 2016.

⁸⁸ Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations, Op.Cit.44.

procedural safeguards correlate with those previously outline Yusuf (2007)'s, "Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria".⁸⁹

The conduct of public hearings was organised within the legal framework of the Tribunal of Inquiry Act, particularly Sections 9 to 13, which state as follows: Subject to the provisions of the Tribunals of Inquiry Act, the Panel shall have and may exercise any of the following powers, that is to say,

(1) To procure all such evidence, written or oral, and to examine all such persons as witnesses as the Panel may think it necessary or desirable to procure or examine;

(2) To require such evidence to be given on oath as is required of a witness testifying before a court;

(3) To summon any person in Nigeria to attend any meeting of the Panel to give evidence or produce any document or other thing in his possession and to examine him as a witness or require him to produce any document or other thing in his possession, subject to all just exceptions;⁹⁰

(4) To issue a warrant to compel the attendance of any person who, after having been summoned to attend fails or refuses or neglects to do so and does not excuse such failure, refusal or neglect to the satisfaction of the Panel;⁹¹

(5) To admit any evidence, whether written or oral, notwithstanding that such evidence might have been inadmissible in civil or criminal proceedings before a court, and power to act on such evidence;

(6) To enter upon any land or premises personally or by any agent or agents duly authorised in writing by the Chairman, for any purpose which, in his opinion is material to the inquiry, and in particular, for the purpose of obtaining evidence or information or of inspecting or taking copies of any documents required by or which may be of assistance to the Panel, and for safeguarding any such document or property which, in the opinion of the Panel ought to be safeguarded for any purpose of the inquiry.

⁸⁹ Ibid.

⁹⁰ Ibid.

⁹¹ *Opata Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit.

The mandate goes on to state that the Chairman has the power to issue, on behalf of the Panel, all such summons, subpoenas and other processes and make such necessary appointments as may be required under this Instrument, either before or during the inquiry until the submission of the Panel's final report.⁹² Evidence taken under this Act shall be inadmissible against any person in any civil or criminal proceedings whatsoever, except in the case of a person charged with giving false evidence before the Panel.⁹³

Any person who (a) threatens, insults or injures any person for having given evidence or on account of the evidence given before the Panel; or (b) hinders or attempts to hinder any person, or by threats deters or attempts to deter any person, from giving evidence before the Panel; or (c) gives false evidence upon oath before the Panel shall be guilty of all offence and liable on summary conviction to imprisonment for a term not exceeding two (2) years.⁹⁴

Any person who, after service on him of a summons to attend as a witness or to produce a book, document or any other thing and, notwithstanding any duty of secrecy however imposed, fails or refuses or neglects to do so or to answer any question put to him by or with the concurrence of the Panel shall be guilty of an offence, and liable on summary conviction to a fine of two hundred Naira or to imprisonment for a term of six months: provided that no person shall be bound to incriminate himself and every witness shall, in respect of any evidence written by him or given by him for the Panel, be entitled to the same privilege to which he would have been entitled if giving evidence before a court of justice.⁹⁵

The above provisions no doubt gave extensive powers to the Commission to carry out its mandate. Because of the overwhelming mandate, a commentator was forced to describe the powers as frightening, because it opens up the possibilities for retributive justice⁹⁶ Different from what Howard Zehr (2001)⁹⁷'s discussed restorative justice in chapters one and two. These extensive powers,

⁹² Ibid.

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶ NWANGWU, EMEKA O. C. 2006. *A Proposal For the Re-Founding of Nigeria: What To Do After the Total Collapse of An African State*. Edwin Mellon Press: Lewinston.

⁹⁷ Ibid.

though utilised were guided by the principles of healing, reconciliation and restoration of harmony. It was not as if the Commission was not empowered or equipped with the necessary means to achieve its mandate.

The mandate is encapsulated in the following comments: “This is what we have attempted to do in this Report. We have tried to be faithful to our terms of reference and to our mandate, both of which imposed on us the obligation “to review the past”; and to map out or indicate pathways to enable us as a people to “redress the injustices of the past; [and] to prevent and forestall future violations...”.⁹⁸ “This has been the *raison d’être* as well as the leitmotif of our work at the Commission. If this Report contributes, even in the smallest way to a national *Risorgimento*, then our work will not have been in vain”.⁹⁹

The argument as to the powers of the Commission is not contestable. It is clear from the above that the Commission had wide-ranging powers to achieve results, but these powers could not be coercively employed to achieve success considering the objectives of the Commission. This is one of the reasons why it seemed in some quarters that the Commission did not fulfil its mandate. Extending the idea, one can argue that the Oputa Commission was guided by the above-mentioned objectives of achieving reconciliation, healing and restoration of harmony in a complex ethno-religious country and this was followed to the latter. It has also been argued in some circles that Nigerians had made many enemies within the country over the years, and an attempt to aggravate it would further result in war and bitterness; therefore, the task of the Commission was to build peace that would endure. This is illustrated in the Report that follows.

The non-appearance of three former heads of state and a number of former top government functionaries, when summoned by the Commission, put to test the theory that in a democracy all men are equal before the law, that the rule of law and not the rule of man should prevail. The Generals rebuffed the Commission notwithstanding the fact that President Obasanjo who is their

⁹⁸ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit. 3.

⁹⁹ Ibid.4.

senior in the military and a serving head of state appeared twice and testified before the Commission. Obasanjo set an example that Nigerians thought the other Generals would emulate.

In addition to not appearing, these former Heads of State filed civil actions challenging the Commission. They are: Generals Muhammadu Buhari, Ibrahim B. Babangida, and Abdul salami Abubakar. The former top functionaries are: Colonel Halilu Akilu and Lt-Colonel A.K. Togun. Many in Nigeria and, indeed, in the international community, wondered why these Nigerians, who had held high public office, refused to appear and testify in person before the Commission. Although the Commission had the power to issue warrants for their arrest, it refused to do so, in the interest of national reconciliation. The spirit of the Commission's mandate and terms of reference are both implicitly against impunity, which makes social reintegration, rehabilitation and reconciliation difficult. Impunity represents the triumph of might over right.¹⁰⁰ Yusuf (2007)¹⁰¹'s work on impunity was an informative one in relation to the latter analysis.

As an extension of the above, these men were not arrested because of the amnesty theory which underscores this work, coupled with the judicial fiat. The argument here is that they were not arrested in the interests of peace, even though the Commission had the legitimate right to effect their arrest. Further the fragile nature of Nigeria democracy in 1999 meant that such a move might have resulted in a serious backlash that might undermine the new government.

However, it is that the Generals showed no remorse for their past deeds, which historically Nigerians expect. As said earlier in chapter 3, the non-appearance of the Generals was a stain on work of the Oputa Commission. As it is today, the Nigerian populace saw the Commission as 'a beautiful feather of little utility.' In view of the above, it is imperative to highlight the terms of reference of the Commission's work; perhaps this will shed light on the success or failure of this all-important task.

¹⁰⁰ Op.Cit.15-16.

¹⁰¹ Ibid.

4.1.4 Objectives and goals of the Oputa Commission

The objectives of the Oputa Commission can be said to be broad and comprehensive to the overall theory of transitional justice mechanism.¹⁰² Such mechanisms were pointed out by Yusuf (2007)¹⁰³ in the International Journal of Transitional Justice. First, the Commission provides an opportunity for Nigeria, as a nation emerging from military rule and human rights violations to confront their decade long problems. This could also culminate in violence that might consume the nation in yet another conflict and more human rights violations.¹⁰⁴

The truth commission offers victims of gross human rights violation a legitimate opportunity to reclaim their dignity. At the same time perpetrators of these violations are given the opportunity to expiate their guilt.¹⁰⁵ It could also facilitate a national catharsis, as future generations would be served by the knowledge that the record of past abuses offered. Furthermore, a TRC could also satisfy the retribution impulse. The naming and shaming of perpetrators and the exposure of their violations constitute punishment through public stigma and humiliation.¹⁰⁶ According to the Chairman of the Oputa Commission:

“The main objective of this major undertaking is to document for posterity details of human rights violations in this particular, significant period in the development of Nigeria. It is also to help to unveil the nature, character and dynamics of human rights violations that might have occurred in each of the geopolitical zones, as well as provide details about the involvement of key agencies of the State,

¹⁰² OJEWALE, O. (1999, JULY 12) “Gains of June 12 Struggle”. *News Watch Magazine*, Vol. 30, No. 1, 28-29.

¹⁰³ Ibid.

¹⁰⁴ DE LANGE, J., 2000. *the Historical Context, Legal Origins and Philosophical Foundation of the South African Truth and Reconciliation Commission*. Villa-Vicencio, C., and Verwoerd, W., (eds.), 14-31.

¹⁰⁵ HENRY, Y. 2000. “Where Healing Begins”. in CHARLES VILLA-VICIENCIO AND WILHELM VERWOOD eds. *Looking Back, Reaching Forward*, Op.Cit. 17; NEIER, A., ZALAQUETT, J. AND MICHNIK, A., 1995. *Why Deal With the Past? Dealing With the Past: Truth and Reconciliation in South Africa*, 1(8).

¹⁰⁶ HAYNER, P.B., 2001. *Unspeakable Truths: Confronting State Terror and Atrocity*. Routledge: New York.

such as the police, the prisons, the military and other security agencies, in the violations of the rights of Nigerians”.¹⁰⁷

In his speech during the inauguration, the President, Olusegun Obasanjo, pointed out that setting up the Commission was a manifestation of the determination of the new democratic government, to heal the wounds of the past, and quickly put the ugly past behind them so as to continue to stretch our hands of fellowship and friendship to all Nigerians for complete reconciliation based on truth and knowledge of truth in our land.¹⁰⁸ Obasanjo’s statement was contradictory, because he knew from the beginning that the Oputa Commission was not the right model for a politically and socially divided Nigeria. The effect of this experiment on the nation was simply cosmetic, designed to fail and a waste of taxpayers’ money. Why did President Obasanjo not exploit his veto powers to publish the Commission’s report, since the majority of Nigerians were eagerly awaiting the outcome? President Obasanjo belonged to the military junta that plunged the country into the mess that the Oputa Commission was meant to clean up.

Besides, he (Obasanjo) was determined to protect the military, his first constituency and those that installed him as a democratically elected civilian president of Nigeria, a compensatory move for the death of his kinsmen, Chief Moshood Abiola and his wife, Kudirat Abiola, murdered on the streets of Lagos by the Abacha killer squad. President Obasanjo also emphasised that the paramount intention of the Oputa Commission was to pave the way for reconciliation, peace and harmony.¹⁰⁹ The peaceful part of the intentions was evidenced in Osuntokun and Olukoju (1997)¹¹⁰’s work on Nigerian peoples and culture that was discussed in chapters one, two and three.

Obasanjo further stated that, “We want to reconcile all those who feel alienated by past political events, heal wounds inflicted on our people and restore harmony in our country. We want the injured and the seemingly injured to be

¹⁰⁷ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit.

¹⁰⁸ Report of Oputa Commission, “Introduction” To Chapter 1, 3-4.

¹⁰⁹ Ibid.

¹¹⁰ Ibid.

reconciled with their oppressors or seeming oppressors. That is the way to move forward”.¹¹¹ The argument glossed over the detail of how the mandate would achieve truth and reconciliation, bearing in mind that the Oputa Commission was not backed by the constitution of the federal republic of Nigeria or published in the official gazette.

Lip service on the part of government actually indicated that various kinds of atrocities had occurred in the country and the opportunity to bring them into the public domain would not only heal the wound but also assuage the anger of people calling for war.¹¹² The political will on the part of government was pretentious and deceitful towards the international community, especially the Commonwealth of Nations, to lift the sanctions imposed on the nation due to Nigeria’s human rights records and dictatorial tendencies.¹¹³

In view of the previous discussion, it is argued that the Oputa Commission fulfilled its goals and objectives without knowing that the government designed the Commission to fail from the drawing board to the finish line. It will however be correct to argue that the Commission achieved its mandate by bringing perpetrators to face their victims in public, thereby making some of the perpetrators face shame and regrets. The Commission also partly achieved reconciliation and peace building among some warring factions in the country but did not achieve the unity of Nigerian society.

4.1.5 Terms of reference¹¹⁴

The Commission’s terms of reference include to: “(a) ascertain or establish the causes, nature and extent of all gross violations of human rights committed in Nigeria between the 15th day of January 1966 and the 28th day of May 1999,”¹¹⁵

¹¹¹ *Report of Oputa Commission, Op.Cit.*

¹¹² MADUEMESI, U. (1995, February 6) “State of War” *Tell Magazine, Nigeria, No.6, 20.*

¹¹³ FAWOLE, W. A. 2003 *Nigeria’s External Relations and Foreign Policy, Op.Cit.* 202. *For More Details, See ONUOHA, B. 2002. “General Abdul Salami Abubakar and the Short Transition”. in ONUOHA, B., & FADAKINTE, M.M. Transition Politics in Nigeria, 1970-1999, Op.Cit, 321-357.*

¹¹⁴ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations, Op.Cit.,.29*

¹¹⁵ *Ibid.*

(b) identify the person or persons, authorities, institutions or organisations which may be held accountable for such gross violation of human rights and determine the motives for the violation or abuse, the victims and circumstances thereof and the effect on such victims and society generally of the atrocities; (c) determine whether such abuse or violation was the product of deliberate state policy, or the policy of any of its organs or institutions or whether they arose from abuse by state officials of their office or whether they were acts of any political organisations, liberation movements or other groups or individuals; (d) recommend measures which may be taken whether judicial, administrative, legislative or institutional to redress injustices of the past and prevent or forestall future violation or human rights abuse; (e) make any other recommendations which are, in the opinion of the Judicial Commission, in the public interest and are necessitated by the evidence; and (f) to receive any legitimate financial or other assistance from whatever source which may aid and facilitate the realisation of its objectives”.¹¹⁶

The Commission was statutorily required “to submit its interim reports to [the President] from time to time but shall, in any case, submit its final report not later than one year from the date of its first public sitting or within such extended period as may be authorised by [the President] in writing”.¹¹⁷ And it was formally inaugurated on June 14, 1999 by President Olusegun Obasanjo to investigate human rights violations committed during the military era.¹¹⁸ As the Chairman of the Commission noted, “it commissioned extensive research and studies on the range, extent, magnitude and ramifications of human rights violation in Nigeria between January 15, 1966 and May 29, 1999, which is the period covered by its revised terms of reference”.¹¹⁹ Continually, the Chairman stated in the report that the Oputa Commission provides

“An overview of the extent of our moral, physical and institutional decay under the military rule. The proscription and

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit. 3.

¹¹⁹ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit. 2-3.

circumscription of our human rights and freedoms under military rule were symptomatic of a much serious malaise, the departure from constitutional or limited government and with it the absence of accountability and transparency in public life. This was the ultimate decay involving the personalization of the governmental process around the military ruler. The return to democratic civilian rule on May 29, 1999 provided the opportunity for us to rise above this decay, to break the silence of the past and to forge ahead, determined to lay to rest the ghost of this dark and painful period in our national history".¹²⁰

A closer look at the terms of reference revealed that it was broad and wide-ranging. For instance, the task of establishing the causes, nature and extent of gross violation of human rights committed in Nigeria from January 15, 1966 to May 20, 1999 was robust and the Commission achieved this by inviting memoranda from Nigerians and victims of human rights violations. It also succeeded in commissioning researchers who helped uncover some of the hidden atrocities committed by law enforcement agents. Similarly, it was credited for succeeding in identifying persons, authorities, and institutions that perpetrated gross violation of human rights on Nigerian citizens. It was in this regard that the likes of Presidents Buhari, Ibrahim, and Babangida and their cronies were invited to account for their actions, which they never did.

Nevertheless, available records indicate that the Commission did not effectively address most past injustices and neither did it prevent or forestall future violation of human rights, even though there were explicit recommendations on how to prevent future recurrence. It is against this backdrop that one notes that Nigerian society before and after the Oputa Commission has not really changed because human rights violations have remained a way of life, the same as ethnic politics. As observed over time, the beauty of truth and reconciliation commissions lie in the fact that they provide an opportunity for victims of human rights violations, not only in bringing their cases to the public

¹²⁰ Ibid.

domain, but the privilege of confronting perpetrators and assailants who dehumanised them. This section demonstrates that the Oputa Commission achieved this objective, despite the pronouncement of the Supreme Court of Nigeria on the legality or otherwise of the Commission and the observance of Shriver (1995)¹²¹ on the failure of the commission primarily.

What was the state of the nation before the Oputa Commission was established, and what role did it play as a truth and reconciliation commission in Nigeria? These are the fundamental questions that the preceding discussion is going to tackle. The political atmosphere on the eve of General Sani Abacha's death was frightening.¹²² During the period, cases of bombing, serial killings and the threat of war dominated debate all over the country. Thus, Professor Bolaji Akinyemi, a renowned statesman, was quick to describe the situation in a lecture titled "One Minute to Midnight in Nigeria", in which he drew attention to the unacceptable and dangerous state of the nation.¹²³

Therefore, developed countries such as America, Britain and France began to warn their citizens about travelling to Nigeria, and at the same time advised those already in the country to be in constant contact with their embassies for updates. Because of concerns emanating from state practice, the Abacha regime became a focus of severe criticism from the international community and civil society for its human rights violation and endless transition politics.¹²⁴ The ideas on transitional politics were ideas broadly shared by Miners (1971),¹²⁵ Elaigwu (1985),¹²⁶ Uwechue (1971),¹²⁷ and Ojiako (1979).¹²⁸

Therefore, Nigeria was suspended from the Commonwealth of Nations for its atrocities and the execution of Ken Saro-Wiwa under a flawed judicial

¹²¹ Ibid.

¹²² ROBINSON, S. 1999, "Hands Up For Democracy", *Time*, No. 11, 15 March. 36-8.

¹²³ AKINYEMI, B. (1993, August 9) "One Minute To Midnight". *Viva Weekly Magazine*, Vol.1, No.38.15.

¹²⁴ ONYEBGULA, S. 2007. *the Human Rights Situation in Nigeria Since the Democratic Dispensation; U.S. Department of State (1999) Nigeria Country Report On Human Rights Practices For 1990, Bureau of Democracy, Human Rights, and Labour.*

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

¹²⁸ Ibid.

process.¹²⁹ It is therefore imperative to examine the Oputa Commission's report and pattern of investigation as a transitional justice mechanism.

4.2. Synopsis of the report and pattern of investigating past human rights violations

This section highlights the synopsis of the report and pattern of investigating past human rights violations from 1966 to 1999. It is important because of the detailed information therein and the trajectory of the work. But more importantly, it is a rich reservoir of knowledge mined by scholars and other countries emerging from war and human rights violations. It has also become a subject of investigation by researchers interested in the history and politics of Nigeria, and peace building in twentieth century Africa. This is the significance of the Oputa Commission as a transitional justice mechanism in Nigeria.

Records show that human rights violations were mostly state sponsored and carried out by security operatives under the auspices of various military regimes in Nigeria. It is for this reason that the level of expectations by members of the public on the release of the Oputa Commission report was high, coupled with the fact that the Abacha regime faced ethnic, religious, and cultural divisions that almost brought the nation to the brink of another civil war. This must have informed the depth of work carried out by the Commission.

In the 'Introductory Volume of this Report', the Oputa Commission drew attention to the historical context for understanding not only the development of constitutional provisions for human rights but also the violation of those rights in the country. The Introductory Volume also provides a theoretical basis for understanding and appreciating the burden of the colonial legacy and its implications for, and impact on, human rights violation in the country.¹³⁰ This is

¹²⁹ *the Killing of the "Ogoni-Nine," That Is Saro Wiwa and Eight Other Minority Activists, Strictly Speaking Precipitated International Reaction Against General Abacha's Government. See BIRNBAUM, M. 1995. A Travesty of Justice: Analysis of the Judgement in the Case of Ken Saro-Wiwa and Others, Unpublished, 2. Also See the Following Dailies: This Day Newspaper, September 24, 1995, 5, the Guardian, January 4, 1996, 28, the National Concord, June 2, 1997, 24.*

¹³⁰ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations, Op.Cit. 26-27.*

clearly elaborated in Chapter Two of this thesis where the negative effects of colonial legacy were discussed by Tamuno, T.A. (2012).¹³¹

Volume 2 of the report considers the implications of the challenges posed by contemporary processes of globalization for the promotion and protection of human rights in Nigeria, by looking at the international dimensions and contexts of human rights. Globalization has made it impossible for any nation to try to be an island unto itself even it wished to be so. Additionally, it examines at length the implications of this internationalization or universalization of the core moral imperatives and values of evolving international law and human rights practice for Nigeria's municipal law generally and more specifically for its domestic human rights law and practice.¹³²

Volume 3 of the report attempts to capture the neglected aspect of the country's history and politics. The volume summarises the findings of the commissioned researchers by compressing the findings into one volume. The Research Reports underscored the fact that there are aspects of Nigeria's public life and public service that needed to be taken more seriously.¹³³

In Volume 4, the Commission looks at Public Hearings. This is ultimately one of the most significant volumes in the report. Its significance lies in the fact that it is the volume that almost everyone who followed the proceedings was sufficiently knowledgeable about.

Despite the initial logistic problems over whether the Commission should have public hearings, it became clear that, beyond drawing public attention to the work of the Commission, the public hearings created the most interactive phase of the Commission's work.¹³⁴ These public hearings brought the work of the Commission within and outside the country to manifest. At the same time, testimonies of human rights violations that were discussed in hushed tones, as mere rumours of the past, were then televised live on local and international media, including social media as a permanent record of what happened in Nigeria.

¹³¹ Ibid.

¹³² Ibid.28.

¹³³ Ibid.29

¹³⁴ Ibid.30.

The healing effect of the public hearings for victims cannot be quantified because for once, they had the privilege to confront the perpetrators, recounting their ordeal and the ungodly deeds of perpetrators in the public domain. Naming and shaming of these culprits was an achievement of the Oputa Commission in relation to Nigeria's transitional justice mechanism.

Volume 5, titled Reparation, Restitution and Compensation, examines the philosophical and legal basis for reparation, rehabilitation and compensation. Each of these three concepts, by raising ethical-philosophical issues, is loaded with a largely subjective meaning.¹³⁵

Volume 6 looks at the Findings and Recommendations. This presented the exciting challenge of sifting through the material before them and stating the Commission's interpretation of the data before it.¹³⁶

In view of the above, one can assert that the Commission's scope was broad and challenging. The question therefore is how did the Commission investigate human rights violations reported to them? In its report the Commission identified and proposed investigations into 150 high profile cases where the evidence against alleged perpetrators met the standards of a *prima facie* case being established that warranted investigation. This is stated in the Commission's report:

"In trying to discover the truth, we commissioned research teams of lawyers, historians and social scientists to write background papers for the Commission on various aspects of our mandate and terms of reference. The research reports submitted to us have been useful in the preparation of this document. In searching for the truth about our past, we tried to adhere scrupulously to the requirements of due process and fair hearing and to the canons of historical and cultural scholarship. We provided the platform, through our Public Hearings and Special Sessions, held across the various geo-political zones of the country, for alleged victims and alleged perpetrators of human rights violations and violations to bare their minds in public.

¹³⁵ Ibid.30-31.

¹³⁶ Ibid.35.

But we were careful not to take their accounts at their face value.

We had to devise means of corroborating them”.¹³⁷

The daily sittings of the Commission however followed the procedure outlined below:

Daily Procedure for Conduct of Public Hearings:¹³⁸

(1) Counsel, Commission staff (registrars, verbatim reporters) and members of the public are seated, (2) The counsel list is signed by counsel, (3) Members arrive and take their seats, (4) Chairman informs gathering of the procedure to be adopted by the Commission, i.e.:

(a) The Commission’s counsel will lead all the witnesses (i.e. the petitioners, respondents and any other witnesses). (b) The petitioner or his counsel, or the respondent/witness or his counsel may cross-examine any witness if need be, (5) The Registrar calls the petition to be heard, (6) The petitioner is called to the witness box, (7) The Commission’s counsel announces appearance, (8) Any other counsel interested in the matter announces appearance, (9) The Commission’s counsel commences examination in chief, (10) Respondent/witness or his counsel is allowed to cross-examine the petitioner, (11) After the petitioner’s testimony, respondent goes into the witness box, the procedure is repeated and his own counsel also leads him in evidence, (12) After respondent’s evidence, petitioner or his counsel may cross-examine him, (13) Commission’s counsel may re-examine any witness if need be.¹³⁹

Clearly the daily sittings of the Commission were probably aimed at orderliness, but more importantly, it was designed to comply with court procedures and tradition. It could also have been intended to help security men checkmate violence, especially during cross-examinations, as tempers could rise on the blatant denial of accusations by opponents.

Also, zonal public hearings were set up at Abuja, Lagos, Port Harcourt, Kano, and Enugu respectively. Petitions heard during the session were 340,

¹³⁷ Ibid.5.

¹³⁸ Ibid.7-8.

¹³⁹ Ibid.

petitions struck out 49, and petitions withdrawn 10.¹⁴⁰ One can argue that the Zonal Public Hearings were specially selected because of the advantage they provided. They were home to people of diverse ethnic groups and strategically located in cosmopolitan cities. They were also accessible to people from different geo-political zones in the country. These were cities that equally commanded large security operatives and military formations.

The Oputa Commission must be commended to produce a six-volume report on human rights violations in the country. It shows the determination of the Commission to unearth the circumstances surrounding human rights violations during military rule. The effect of this could be seen in the fact that none of the people or organisations accused the Commission of prejudice or negligence in handling their cases. The Commissions' work was also appreciated in the sense that it successfully conducted public hearings and cross-examination of victims and opponents as an arbiter.

Nevertheless, how much truth and reconciliation it achieved remained a matter of debate, though one thing is clear about the commission, it failed to achieve total truth and unity, but did a lot in bringing about reconciliation to warring communities in Nigeria. It must be commended further to produce a six-volume report on human rights violations in the country. It was also appreciated for conducting public hearing and cross-examination of victims and opponents. As the Chairman explained:

“Let me now turn briefly to some of the important issues raised and discussed at length in the Commission's report. During our sessions in Lagos, Lagos State, we reconciled the quarrelling communities of Maroko village. We also recorded our first major breakthrough when the warring Ife and Modakeke communities in Osun State signed a Memorandum of Understanding and a Joint Declaration. This is contained in the appendix to the report pledging to live in peace and harmony and to adopt only peaceful means in pursuing their respective rights and entitlements. It was

¹⁴⁰ Ibid.9-10.

unfortunate that the media did not give the Ife/Modakeke reconciliation the prominence it deserved".¹⁴¹

Beginning with the Maroko case against Lagos State during the Babangida administration, the regime of Col Raji Rasaki, as governor of Lagos State, forcefully evicted the inhabitants of Maroko, predominantly fishermen. The government claimed that the environment was dirty and uninhabitable. Thus, the former was meant to carry out a clean-up exercise and resettle inhabitants into low cost houses. It turned out to be a ploy; the military junta forced them out and shared the land among the military class. Standing on that vast area of land today are skyscrapers and high-rise buildings owned by corrupt military officers in Nigeria and their contractors. The people of Maroko went to court to contest the matter, as they have been rendered homeless, but to no avail. While pursuing the matter, most of them died, while others were traumatised and brutalised.

This development became heart-rending for the nation in general, that people could be rendered homeless in their country, and at the same time denied access to a court of law to argue their case. This human rights violation was perpetrated by the Babangida regime and yet they refused to honour the invitation to account for these brutal acts before the Oputa Commission.¹⁴² It gladdens the hearts of the people that the Oputa Commission finally brought justice to them and their children, some of who had degenerated into street urchins, while others were serving various jail terms since they left their profession as fishermen. This is the agony of a nation under military siege and human rights violation.

According to the Chairman, "during our session in Port Harcourt, Rivers State the Commission succeeded in brokering a Peace Accord among the warring factions and groups in Ogoni land". In particular, "we managed to unite and amalgamate the Ogoni Four and the Ogoni Nine into the Ogoni Thirteen".¹⁴³ As the New Nigerian 'Editorial' of 16th February 2001 observed, "The Peace Accord signed by the warring factions in Ogoni land will go down in the socio-political

¹⁴¹ Ibid.5-8.

¹⁴² Ibid.9-10.

¹⁴³ Ibid.

development of this country as one of the landmark achievements of the Human Rights Violation Investigation Commission".¹⁴⁴ Analysis by Adeyemo (2013),¹⁴⁵ Guaker (2009),¹⁴⁶ Ikhariale (2008),¹⁴⁷ Yusuf (2007),¹⁴⁸ Akhiero (2001/2002)¹⁴⁹ and Kukah (2011)¹⁵⁰ provided clear insights on how these writers perceived the work of the Oputa Commission in chapter two on the latter's work.

The Chairman further added that "while I do not wish to over-dramatize or generalize from these examples, what needs emphasis is that unless we try, and try, we cannot even start the long journey to national reconciliation and maintain its momentum. The flashpoints of communal unrest in our country constitute albatrosses around our necks. Let us with the crossbow of the Commission shoot down each albatross in the interest of peace and unity of our country and for the sake of the survival of our nascent democracy".¹⁵¹

The Commission's procedure revealed that it required cognisance of legal traditions and professional ethics. Thus, the various petitions that were entertained, and those struck out, show the determination of the Commission to get to the roots of the entire process. Similarly, the efficacy of the latter was seen in the signing of the peace accord between and among warring factions in Nigeria and this shows the extent to which it fulfilled its objectives and mandate.

The previous discussion has shown that Nigeria's human rights violations have long been a matter of concern within and outside the country. It was despicable to civil liberty institutions and well-meaning Nigerians that a government could govern its people with emergency decrees in the absence of an emergency. It was also absurd that people could simply disappear in circumstances that government operatives could not explain or define. Nonetheless, this study argues that the Oputa Commission did its best within the scope of its mandate, the victims' response and government support. Since it was

¹⁴⁴ Ibid.

¹⁴⁵ Op.Cit. 1-103

¹⁴⁶ Op.Cit. 1-51

¹⁴⁷ Op.Cit .1-4

¹⁴⁸ , Op.Cit.268-286

¹⁴⁹ Op.Cit.116-135

¹⁵⁰ Op.Cit

¹⁵¹ Ibid.5-8.

simply a truth and reconciliation commission the extent of apologies and revelations might not assuage the bitter experiences of victims. In all, it was understandable that against all odds the Oputa Commission met the standards of international guidelines.

4.3 Evaluation and achievements

The Oputa Commission did not fall short of standards considering its mandate, objectives and goals. Apart from the challenges, constraints, and refusal of some highly placed individuals, including former heads of state, to honour the invitation to testify, the Oputa Commission was a huge success.

Besides, the immediate resignation and refusal of some appointed members to serve in the Commission sent shivers down the spines of many observers and political thinkers, the Commission lived up to its mandate amidst ethnic, politics and religious divisions. It was the attempt to guide against further degeneration of the country that led to the question of how much truth and reconciliation the commission achieved because punishments, sanctions and compensation were not handed down to perpetrators and victims.

Indeed, the Commission painstakingly allocated enough time to listen to the testimony of relatives of those believed to have been extra-judicially killed by state agents due to their non-violent political activities or relationship with critics of government. For example, Menon Bagauda narrated how his brother, Kaltho Bagauda was arrested and executed for being a journalist of TELL Magazine.¹⁵² The family of Alice Tumuniyi wept as they narrated how Alice, a student of the College of Education, Agbor was killed by a policeman at the Benin-Shagamu checkpoint.¹⁵³

Another pathetic hearing was the petition of the family of suspected coup leader, Lieut. Col. Olu Akinyode who died in mysterious circumstances in prison.¹⁵⁴

¹⁵² Ibid.

¹⁵³ See ANNUAL REPORT 1997. *A Civil Report On the State of Human Rights in Nigeria*.6.

¹⁵⁴ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations, Op.Cit. Also See Annual Report 1998. A Civil Report On the State of Human Rights in Nigeria, .86; "Akinyode, Coup Convict, Dies in Prison". the Post Express, December 31, 1998.1.*

These gory tales of past abuses gave real insight into the atrocities perpetrated by the military junta on Nigerians during their years in power. It was sad that security agents employed by the state to protect lives and properties of citizens were deployed by those who held the mantle of power to oppress and dehumanise the same people they were paid to protect. Some petitioners before the Commission sought justice; others requested reinstatement in their jobs, financial compensation for property seized, as well as medical bills for injuries that resulted from torture or ill treatment at the hands of security forces, but to no avail.

The case of Professor Akinjide Osuntokun, former Nigerian Ambassador to Germany, readily comes to mind. He was arrested at the airport and tortured by Major Omenka for not regularly corresponding home. As an asthmatic patient, the old man was denied the use of his inhaler until he collapsed.¹⁵⁵ Such flagrant abuse was commonplace as roving bands of security operatives acted with impunity because no one could question their actions. Testimony before the Oputa Commission revealed abuse committed by the State Security Services (SSS) and most of these officers were let off the hook without punishment, to serve as a deterrent, especially those that killed Dele Giwa, the editor-in-chief of News watch Magazine on 19th October, 1986.¹⁵⁶

A limitation of the Commission was that it did not possess the scientific and technical expertise to extract truth from opponents and this frustrated the efforts of victims, some of whom refused to make a second appearance. It was also frustrating that records of arrest and offence, interrogation and death were not made available to the Commission for scrutiny, hence the denial by security officers named by witnesses as responsible for their detention, torture or murder of relatives of petitioners.

The Commission purportedly assumed that no Nigerian was above the law, calling the highest officials to testify before the Commission, including the three

¹⁵⁵ See ANNUAL REPORT 1997. *A Civil Report On the State of Human Rights in Nigeria*.6.

¹⁵⁵ *Oputa Commission, Synoptic Overview of HRVIC Report, Op.Cit.*

¹⁵⁶ OLUKOTUN, A., 2010. *the State As Undertaker: Power and Insurgent Media in Nigeria*. in *Encountering the Nigerian State*. (155-175). Palgrave Macmillan: New York.

former heads of state that incidentally refused to appear, but sought protection in the court's interpretation of the powers of the Commission to summon them.¹⁵⁷

The decision of the Supreme Court in that case was cited as the basis for the refusal of the Obasanjo government to officially release the report of the Commission or implement its recommendations. The then Attorney General and Minister for Justice, Akinola Olujimi, cited this decision and claimed the Commission was unconstitutional.¹⁵⁸ A notion that was also cited in chapter one when Akhihero¹⁵⁹ on his own also questioned the constitutionality and powers of the Commission.

This claim is untenable because the Supreme Court never annulled the Oputa Commission. A clear reading of the decision of both the Court of Appeal and the Supreme Court show that both courts affirmed the legality of the Commission under the African Charter on Human and Peoples Rights as well as other international human rights instruments ratified by Nigeria.¹⁶⁰

The failure of the government to release the Commission's report and implement its recommendation was a direct result of the influence of the military class that still holds sway in the new democratic dispensation. Besides, it is instructive to note that the same military elite, especially two of the three Generals who were summoned by the commission installed the Obasanjo regime. They readily posed a threat to democratic government and could readily turn the tables. Consequently, a number of civil society organisations were provoked to publish the report on the Internet.¹⁶¹ To date Nigerians are still calling for the official release of the report of the Oputa Commission because it is a treasure trove for the nation.

The limitations of the Commission cannot be overlooked in achieving total truth, unity and reconciliation. It suffered from inadequate budgetary allocation to

¹⁵⁷ FALANA, F. (2005, JANUARY 8) *"the Oputa Panel Report"*. *Guardian Newspaper*.

¹⁵⁸ Ibid.

¹⁵⁹ Ibid.

¹⁶⁰ FALANA, F. (2004, December 20) *Editorial Opinion*. *"When Will Leaders Pay For Their Iniquities?" This Day Newspaper*.

¹⁶¹ *Centre For Democracy & Development (Cdd) and the Umbrella Organization Civil Society Forum (Csf) Published the Report On the Internet*; ODEREMI, KUNLE (2005, January 2) *"Reopens Death of Mko Abiola, Dele Giwa, Others— Oputa Panel's Report"*. *Sunday Punch*; OLOKOJOBI AKIBU (2004, December 11) *"We Will Publish Original Oputa Report – Fayemi"* Independent.

finance its work, though this is curious that a government, which set up such an important Commission, starved it of funds, because government never wanted it to survive or execute its mandate successfully. The poor funding of the Commission has been exhaustively discussed earlier in this chapter.

Additionally, the Oputa Commission was a presidential truth and reconciliation commission, which unfortunately meant there was no provision for amnesty for perpetrators of gross violation of human rights in its enabling instrument. Though this seems to be implied, as no individual victims were arrested or imprisoned, perhaps because the goal of the Commission was national reconciliation, and this was reiterated in President Obasanjo's speech at the inauguration of the Commission on June 14, 1999.

To underscore the motives behind the setting up of the Oputa Commission, it is imperative to return to the relevant part of the president's address. He said that "underlining the inauguration of the Commission is the determination of his administration,"¹⁶² "to heal the wounds of the past and quickly put the ugly past [behind] us so as to continue to stretch our hands of fellowship to all Nigerians for complete reconciliation based on the truth and the knowledge of the truth in our land".¹⁶³ It should be recalled that the Commission said at the beginning that it was not a court of law, as such nobody was on trial before the Commission, and that the evidence given before it could not be used anywhere against any person. Such assurances by the Commission were not strong enough to persuade perpetrators to incriminate themselves by making full disclosures of the atrocities they committed.

The question of amnesty for past abuse remained controversial in human rights discourse and peace building. This chapter therefore argues that blanket amnesty should be discouraged and, when suggested by departing tyrannical regimes, should be rejected by the international community on the grounds that no individual or organisation is above the law. At the same time, prosecution for gross violation of human rights must be encouraged to serve as a deterrent. And it is only

¹⁶² UWALEKE I. 2001, "Oputa: More Questions Than Answers". *the Guardian*, August 11, .16.

¹⁶³ *Address By His Excellency the President and Commander-in-Chief of the Armed Forces, Chief Olusegun Obasanjo, GCFR, At the Inauguration of the HRVIP On Monday, 14 June 1999 At the State House, Abuja, Nigeria.*

in certain circumstance that some form of amnesty should be employed to ensure that a fragile democracy could take root in the country. Therefore, in deciding whether any form of amnesty should be considered for truth and reconciliation, the local situation should be a factor or a basic primary consideration. If local circumstance favours granting some form of amnesty to ensure that democracy survives and that the truth of past atrocities is revealed for the benefit of the victims and their families, it is justified. But this type of amnesty must be granted to ensure accountability and discourage impunity.

Nevertheless, amidst the shortcomings of the Commission, this study establishes the fact that the Oputa Commission fulfilled an important part of Nigeria's history. It gave confidence and hope to those clamouring for national dialogue, and by extension national conference to discuss national problems and ethnic agitation. The confidence to invite the three former Heads of state was a great success; it shows that the Commission had fulfilled an important aspect of its mandate.¹⁶⁴ Its capacity to carry out its mandate and objectives in the face of financial constraints also explains the determination of members to contribute their quota to nation building, peace and unity of the country.

Indeed, the present campaign for the release of the Oputa Commission report in Nigeria by civil society and the general masses was an indication that the Oputa Commission did its best.¹⁶⁵ Other spokespersons, like Professor Ayodeji Olukoju, affirm that it represents a milestone and national dialogue par excellence; as such there is no need for a national conference.¹⁶⁶

A cursory look at the achievements of the Commission reveal that it did its best within the period it existed, despite the difficult task of crafting volume 6 of the report, entitled Findings and Recommendations, because of the challenges of sifting through large numbers of material before the Commission and stating the Commission's interpretation of the data before it. It also arranged the resolution

¹⁶⁴ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit.

¹⁶⁵ OLOKOJOBI AKIBU (2004, December 11) "We Will Publish Original Oputa Report – Kayode Fayemi". *Independent Newspaper*; Also See FALANA, F. (2004, December 20) *Editorial Opinion, "When Will Leaders Pay For Their Iniquities?"* This Day Newspaper.

¹⁶⁶ Oral Interview With Ayodeji Olukoju, 62 Years, Professor of History and Strategic Studies, University of Lagos, Nigeria. 15/08/2017.

of conflict and peace building of some ethnic groups such as the Modakeke and Ife conflicts, the Arewa and Ohaneze and several others.¹⁶⁷ Indeed, how much truth and reconciliation was achieved remained with political thinkers and observers. This section discovered that the Oputa Commission did not achieve total truth and unity, even though it succeeded to some extent in bringing about reconciliation to warring ethnic communities in Nigeria.

4.4 Reparation options – a neglected theme

This section examines the question of reparation and compensation for victims of human rights violations in Nigeria. Over time it has been recognised that reparation means much to victims of human rights violations, especially the aspect of forgiveness in reconciliation. It is also an indisputable fact that total reconciliation and unity can only be achieved through payment of damages and compensation to victims of human rights violations for the loss of property, health and loved ones. To what extent did the Oputa Commission exploit the options of reparation to assuage aggrieved parties and victims for losses incurred during military rule?

The question of reparation for victims of human rights violation has remained a contentious issue for most truth commissions including the Oputa Commission. This was largely due to the enormous financial cost involved in setting up the reparation programme and competing demands for scarce resources, thus most governments are reluctant to pay compensation to victims of gross violation of human rights.¹⁶⁸ From the outset, it was clear that the question of reparation for victims was not at the top of the Nigerian government's

¹⁶⁷ See ANNUAL REPORT 1997. *A Civil Report On the State of Human Rights in Nigeria*.6.

¹⁶⁷ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations.*

¹⁶⁸ HAYNER, P. 2001. *Unspeakable Truths: Confronting State Terror and Atrocity*. Routledge: New York, 182.

agenda.¹⁶⁹ The plight of victims was previously covered in the work of Zehr, (1990)¹⁷⁰

In his address at the inauguration of the Oputa Commission, President Obasanjo's emphasis was on reconciling those alienated by past political events, healing wounds inflicted on Nigerians and restoring harmony to the country.¹⁷¹ In the entire six-page address, President Obasanjo made no reference to reparation for victims appearing before the Commission, or what the thinking of government was on the issue. Therefore, it can be assumed that President Obasanjo believed that no amount of money would compensate for loss of lives or other serious human rights violations, so it would be insulting to the victims or their families to be offered money for the abuse they suffered.

This thinking is skewed, as it does not take into consideration the needs of victims. It is true that no amount of money could compensate for the loss of life of a loved one or other grievous human rights violations that victims suffered.¹⁷² It would be most unjust to leave the victims high and dry without any form of compensation when they were unable to provide for basic needs. The instrument that established the Oputa Commission gave it the powers to recommend measures that would redress past abuses. In that regard it would not be unreasonable to assume that the opportunity offered by the work of the Commission could be exploited to fashion a full reparation package for victims. Some of the victims who testified at the Commission's public hearings stressed the fact that reparation was key to healing the wounds inflicted on them.

The majority of petitioners that submitted petitions before the Oputa Commission and those that actually testified at public hearings were quite clear

¹⁶⁹ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman's Foreword). Presented To President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo GCFR Submitted By Human Rights Violation Investigation Commission, May, 2002 Summary, Conclusions and Recommendations (Accessed 5 May 2017).*

¹⁷⁰ Ibid.

¹⁷¹ *Address By President Olusegun Obasanjo At the Inauguration of the Human Rights Violation Investigation Panel On Monday, 14 June 1999 At State House, Abuja, Nigeria, and .2.*

¹⁷² See ANNUAL REPORT 1997, *A Civil Liberty Organisation Report On the State of Human Rights in Nigeria*. Also See ANNUAL REPORT 1998, *A Civil Liberty Organisation Report On the State of Human Rights in Nigeria*.

that they needed reparation for past abuse suffered.¹⁷³ The victims were known to have suffered untold hardship for unlawful detention, torture, as well as other unjustified human rights violations through the actions of state agents. Some had lost their economic base and source of livelihood while in custody. There is no doubt therefore that these victims were legally justified in their demands. They expressed the same sentiments at the Seminar on the Right to Compensation, Rehabilitation and Restitution for Victims of Gross Violations of Human Rights organised jointly by the Human Rights Violation Investigation Commission, Centre for Democracy & Development and Legal Resources Consortium from July 31 to August 3, 2001.

The seminar gave voice to various perspectives on the issue of reparation for victims including: Colonel R. S. Bello-Fadile¹⁷⁴, Mrs Chris Anyanwu¹⁷⁵, Sylvester Odione-Akhaine and Professor Femi Odekunle¹⁷⁶, and Malam Shehu Sani, Festus Okoye and Emma Ezeazu among others.¹⁷⁷ The victims who participated were unanimous in their demands for reparation. For these victims, nothing short of justice, financial compensation and a public apology for gross violation of human rights they suffered could start the healing process.¹⁷⁸

In a survey carried out by a human rights organisation, Media Rights Agenda in Lagos, Nigeria, a slight majority of respondents said they doubted the ability of the Commission to achieve meaningful reconciliation, and insisted that reconciliation is insufficient, and asked for "justice" and "adequate" compensation for victims. According to indigenes of Lagos, genuine reconciliation is not possible in an atmosphere of lies and unrepentant attitudes on the part of perpetrators. They contended that people's rights have been blatantly violated and to achieve genuine reconciliation a form of restitution was needed.

¹⁷³ *Opota Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman's Foreword). Presented To President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo GCFR Submitted By Human Rights Violation Investigation Commission, May, 2002 Summary, Conclusions and Recommendations (Accessed 5 May 2017).*

¹⁷⁴ *Jailed With President Obasanjo For the 1995 Alleged Coup Plot Against the Regime of General Sanni Abacha.*

¹⁷⁵ *Ibid.*

¹⁷⁶ *Jailed For the 1997 Alleged Coup Plot Against General Sani Abacha*

¹⁷⁷ *E. ANABA (2001, August 8) "Why Opota Commission Has Been Inactive". Vanguard, 11.*

¹⁷⁸ *Ibid.*

They therefore cautioned that for the Commission to be relevant and not lose its integrity, its terms of reference should be expanded to include justice and adequate compensation for victims of human rights violations. Lagosians also say that the government must ensure that the Commission's findings and recommendations were not swept under the carpet, as has been the case with similar investigation commissions in the past that were either tampered with or jettisoned.

At the public hearings the plea for reparation was clearly evident and often the seriousness of the situation for victims justified their demand. Mostly victims were of the opinion that it was the duty of the Commission to grant them some form of reparation for injuries suffered. For some very poor victims it was paramount that they received financial assistance. This was the driving force that brought them to the Commission. They came with high expectations of how the Commission would help them financially. It did not seem to matter that the Commission had no powers to directly assist them financially.¹⁷⁹ In order not to raise their expectations the Commission should have made it clear to victims that it had no powers to pay compensation directly and could only make recommendations.

The Oputa Commission approached the issue of reparation with utmost caution. It could be that caution on the part of the Commission was in deference to the views of President Obasanjo, who was not favourably disposed to the issue of monetary compensation to victims of gross human rights violation. In response, the Chairman attempted to play down the issue of monetary compensation, placing more emphasis on symbolic forms of reparation.¹⁸⁰

In its draft report submitted to President Obasanjo the Commission made the following recommendations with respect to reparation: There was the need for symbolic reparation. In this case the government should recognise the sufferings of victims of past human rights violations because some of them paid the supreme price with their lives. It would be a recognition of their worth and

¹⁷⁹ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman's Foreword)*, Op.Cit.

¹⁸⁰ Ibid.

sufferings if the government recognised their birthdays or the day they died as national holidays. The government could also recognise victims' pain by establishing national monuments in recognition of past injustice.

The Commission also suggested material and financial assistance, though this would not in any way compensate for the loss of loved ones in police or prison custody, or for many years of incarceration.¹⁸¹ The government could consider establishing a fund, in which the state as well as individuals, including perpetrators and the international community, could make contributions. There are many victims as well as survivors in dire need of financial assistance to make ends meet, or even seek medical treatment for injuries sustained while in custody.

The Commission equally suggested that the President must, as a matter of urgency, establish a National Human Rights Trust Fund¹⁸² to provide for victims' claims. Money from this fund should not only be used to pay financial claims but also support the capacity of appropriate institutions whose activities contribute to democratic consolidation, especially building a culture of human rights in our society.¹⁸³ Funds could then be obtained from the national budget, international donor community, local and multinational businesses, recovered from corrupt public officials and from interest earned.

Additionally, the Commission articulated the need for access to psychological /medical services so that victims and survivors of gross human rights violations could be given free access to these services. The money for such services should be paid by the state. A proper referral system could also be set up, so that psychological counselling services would be accessible to victims in rural areas.

Having examined the suggestions and recommendations of the Commission, why did the government renege on these vital aspects of welfare that could address the problems of victims of human rights violations in the country? The interest of victims was not central to government because they expected the Commission to be a gathering of complainants and an assembly of rhetoric.

¹⁸¹ Ibid.

¹⁸² *There Will Also Be A Need For An Independent Body of Recognised Competence To Oversee the Activities of the Fund.*

¹⁸³ *See For Example, National Human Rights Commission, Legal Aid Council, Human Rights Non-Governmental Organizations, Etc.*

Therefore, one can conclude that total truth and reconciliation were not the focus of government, but to let the world know that a truth commission was going on in Nigeria, so the international community would assume the country was now on a path of good behaviour and would perhaps lift sanctions imposed during the Abacha regime.

4.5 Lessons of the Oputa Commission

The lessons of the Oputa Commission must be considered when analysing the transition justice mechanism in Nigeria. This is because of the circumstances surrounding its establishment, as it was clear that Nigeria was on the verge of collapse following the autocratic rule of the military for the period under study from 1966 to 1999.¹⁸⁴ The assertion comes in line with what Falola et al. (1989),¹⁸⁵ Crowder, (1966),¹⁸⁶ and Falola et al. (1991),¹⁸⁷ Akpofure and Crowder (1966),¹⁸⁸ Perham (1960),¹⁸⁹ and Lugard (1922),¹⁹⁰ informed, as mentioned in chapter one under reviewed literature.

This development in Nigeria led to internal disorder and socio-economic dislocation. Thus, various ethnic groups began to clamour for secession and war to rid themselves of domination and marginalisation. With the death of Abacha in June 1998, and the coming to power of General Abdu salami Abubakar as Head of State, it became obvious that Nigeria needed a truth and reconciliation mechanism to address grievances and human rights violations. This therefore led to the inauguration of the Oputa Commission by the democratically elected Obasanjo government.

In light of the above, this section examines the lessons of the Oputa Commission from two perspectives: first, for Nigeria and how Nigerians were affected, and second, for countries emerging from war, as well as human rights

¹⁸⁴ MEREDITH, M. 2011. *the State of Africa, Op. Cit.* 574-586.

¹⁸⁵ Ibid.

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Ibid

¹⁹⁰ Ibid.

violations. It should be emphasised that this theme is also addressed in Chapter Five of this study. In this regard an attempt will be made to highlight salient points in the discussion. The goals and objectives of the Oputa Commission as previously mentioned were to heal the wounds of the past, to achieve reconciliation, and to restore harmony to the country. The important question here is to what extent did the Commission achieve these goals and what was the effect on the nation?

The Oputa Commission attempted to heal the wounds of the past¹⁹¹ by inviting aggrieved persons, ethnic groups and victims of human rights violations, including observers and civil liberty groups and their coalition partners to testify. The Commission met all standards and criteria of a TRC, and doggedly invited those of low and high status in society in regard to past abuse that made Nigeria a pariah state. This singular act was commendable and a lesson for the Nigerian people and nations emerging from war and associated human rights violations.

The Commission's work was commendable, even though it did not heal all the wounds of the past, because there was no reparation or compensation for victims of human rights violations as had happened in other countries. This is valid per se because while existing single-case, regional and cross-national studies find that truth commissions have a positive impact on human rights protection, they present some methodological concerns. For example, single-case studies often lack comparative data on human rights from prior to the truth commission¹⁹².

Similarly, attempts to achieve some lessons and legacy in the form of resettlement and compensation, particularly for those who lost their job and position, including the displaced people of Maroko¹⁹³, met a brick wall and the question for Nigerians was what did the Commission offer victims other than forgiveness, naming and shaming of perpetrators? For victims, the lesson was not enough for all the sufferings at the hands of the military junta. The victims yearned for some form of compensation and punishment for perpetrators, but this did not receive the attention it deserved, as it was reiterated time and time again that the

¹⁹¹ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman's Foreword)*, Op.Cit.

¹⁹² GREASY, P. AND ROBINS, S., 2014. *From Transitional To Transformative Justice: A New Agenda For Practice*. *International Journal of Transitional Justice*, 8(3), 339-361.

¹⁹³ Ibid.

mandate of the Commission did not include punishment of victims. However, section (d) of the mandate stipulates, “to recommend measures which may be taken whether judicial, administrative, legislative or institutional to redress injustices of the past and prevent or forestall future violation or abuse of human rights”.¹⁹⁴ In fairness to the Commission, it made far reaching recommendations in its report for government to implement. It was not a court of law to hand down punishments and penalties. The lesson here could be that the government of Nigeria was not prepared for a total truth and reconciliation commission, for which it has been pointed out previously that the Oputa Commission was a child of circumstance.

In this knowledge, one can safely argue that the lesson of healing was not total for Nigerians and this has remained a vexed issue in some quarters, as victims watched perpetrators walk the streets free. This is not only a lesson for Nigerian people but nations emerging from conflict and human rights violations. This chapter therefore establishes the fact that a truth and reconciliation commission must have compensatory benefits for victims of human rights to cushion their losses and for perpetrators to reveal what happened, including naming their partners in crime. This is what the Oputa Commission lacked in healing all wounds.

On the other hand, the goal of restoring harmony was also a tall order as Nigeria continues the struggle for power, hegemony and resource control. Peace in Nigeria today can be likened to one sitting on a keg of gun powder.

The struggle for domination between northern and southern Nigeria, in fact, has been aggravated since democratic rule in 1999 because there has been no restoration of harmony or unity. Northern Nigeria set up the Boko Haram militants to truncate the administration of Good Luck Jonathan, the same way the Niger Delta militants declared war on the Yar’dua administration until amnesty was granted.

In modern times, the Igbo have been calling for a declaration of independence for Biafra. It should be recalled that they seceded in 1966, which led to the Nigerian Civil War. All the complex issues that have not gone away point

¹⁹⁴ Ibid.

to the fact that the Oputa Commission did not restore harmony to the Nigerian peoples and the Nigerian State and importantly, the Commission's report was not published for public consumption.

The Commission's mandate was a step in the right direction because it brought peace between the Ohaneze and Arewa groups, Maroko and Lagos State, and Ife and Modakeke communities.¹⁹⁵ These were groups that had long trod the path of conflict, and efforts by past governments to reconcile them proved abortive until the Oputa Commission.

This chapter demonstrates that the Commission provided lessons in the reconciliation of some warring communities. The achievement of this feat should be integrated in intellectual production and research methodology on conflict and peace building. In light of the above discussion, the Oputa Commission did its best within the prescribed mandate and objectives, amidst the deceit of government, to achieve reconciliation and peace building.

Clearly, its goals could not be met, because the Commission was not the right model for Nigeria, due to ongoing ethnic politics, domination and religious division, which created hegemony, and economic disequilibrium. The country had long been under military rule and things were done with impunity and recklessness.¹⁹⁶ The impunity of the military regimes demonstrated in the preceding chapters was aptly captured in the writings of Yusuf (2007).¹⁹⁷

Additionally, the Commission was careful in that agitation of some ethnic groups was still potent; hence the Commission erred on the side of caution not to cause further disaster and human rights violations. Nevertheless, the Oputa Commission would have followed its mandate to the letter,¹⁹⁸ but there was fear of retribution and worsening the already charged situation waiting to explode.

The diplomacy of the Commission in this regard was commendable, even though it neither restored unity nor healed all wounds. That is not to say that it

¹⁹⁵ Ibid.

¹⁹⁶ See SIOLLUN, M., 2009. *Oil, Politics and Violence: Nigeria's Military Coup Culture (1966-1976)*. Algora Publishing: New York.

¹⁹⁷ Ibid.

¹⁹⁸ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman's Foreword)*, Op.Cit.

did not achieve reconciliation of warring communities. It was never an exercise in futility, and that is why most Nigerians still clamour for the release of the Oputa Commission report, including civil liberty groups, since it was the best exercise Nigeria had historically undertaken. A case in point therefore for this analytical stance is that sometimes, although it may well be that the 'jury is still out' and not enough time has elapsed in order to evaluate the real long-term consequences of truth commissions, it appears that one of the main reasons for the lack of evaluation is largely a gap in policy and scholarly literature; namely, the lack of established mechanisms for measuring the alleged multiple benign effects associated with truth commissions and therefore for assessing their overall success.¹⁹⁹

4.6 Conclusion

In light of the above discussion, the conclusion focuses on the challenges, pitfalls and achievements of the Oputa Commission. This is important, considering the debate on how much truth and reconciliation the Commission achieved in its quest for Nigeria's unity and development. The Oputa Commission confirmed that Nigeria's problems of nation building could be traced to remote and immediate factors. In the former, the amalgamation of diverse and multifaceted ethnic groups led to a marriage of convenience and malfunction of identity. It was also compounded by the Arthur Richards Constitution of 1946, which introduced regionalism and ethnic politics in the country. In the intervening years leading to the Nigerian Civil War it became obvious that the problems created by the constitution were lopsided as it encouraged domination, prebendal politics and corruption. This anomaly brought about military incursion into politics in 1966 that led to human rights violations and endless political transition. And the immediate factor has been traced to the annulment of June 12, 1993 elections in which Moshood Abiola was democratically elected but denied the presidency by the

¹⁹⁹ HIRSCH, M.B.J., MACKENZIE, M. AND SESAY, M., 2012. *Measuring the Impacts of Truth and Reconciliation Commissions: Placing the Global 'Success' of Trcs in Local Perspective. Cooperation and Conflict*, 47(3), 386-403.

military regime of Ibrahim Babangida, leading to long-term political and economic stagnation.

Writing in the same vein, Adeniyi (2005) notes that the events that followed in successive years brought about Ernest Shonekan's Interim Government and the infamous Abacha regime.²⁰⁰ By November 1995, Ken Saro-Wiwa and his Ogoni kinsmen had been extra-judicially hanged, and the abuse continued till the country assumed an odious image. Building on this thinking, Fawole (2003) contends that Nigeria swiftly fell from an impressive height of being the "African power", a position occupied since the 1970s, to become a pariah nation,²⁰¹ a country derided and isolated by its traditional allies and friends. In an ironic twist of fate, it was suspended from the Commonwealth of Nations.²⁰²

Eventually Abacha and Abiola died in mysterious circumstances giving way to the Abubakar administration. Fawole (2003) adds that the new regime began a slow process of lifting the country from the pit of infamy into which it had fallen in the course of Abacha's four-and-a-half-year dictatorship.²⁰³ The effect of this was the return of temporary peace to the country and beyond. Abubakar entered into an agreement to hand power and escape retributive justice. At the same time, it was argued that traditional rulers present at the meeting, including politicians who were sceptical of political transition, promised Abubakar that he would not only escape retributive justice but would enjoy amnesty with his lieutenants.

It is from this paradigm that this study establishes the theory of retribution/restorative and amnesty or amnesia. It was a series of events in the last years of military rule that prompted General Olusegun, who became the democratically elected president of Nigeria, to compensate (restorative theory) the Yoruba ethnic group for the fate of Moshood Abiola, established the Oputa

²⁰⁰ ADENIYI, O., 2005. *the Last 100 Days of Abacha: Political Drama in Nigeria Under One of Africa's Most Corrupt and Brutal Military Dictatorships*. Book House Company: Lagos.

²⁰¹ For A More detailed Treatment of Nigeria's Descent Into International Pariah Status, See FAWOLE, W.A. 1999. *Paranoia, Hostility and Defiance: General Sani Abacha and the New Nigerian Foreign Policy*. Obafemi Awolowo University Press Ltd: Ile Ife.

²⁰² FAWOLE, W.A. 2003. *Nigeria's External Relations and Foreign Policy Under Military Rule, 1966-99*. Ile-Ife Obafemi Awolowo University Press Ltd., 214. Also See ONUOHA, B. 2002. *General Abdul Salami Abubakar and the Short Transition*. Malt House Press Ltd: Ikeja, 320-357.

²⁰³ FAWOLE, W. A. 2003. *Nigeria's External Relations*, Op.Cit. 215.

Commission to address human rights violations perpetrated by the military between 1966 and 1999.

The Oputa Commission, as a truth and reconciliation commission (TRC) was entrusted with the responsibility of healing the wounds of the past, achieving reconciliation based on truth and knowledge, and restoring harmony in the country.²⁰⁴ According to the Chairman of the Commission, in making recommendations, “we have had to fall back on the relevant sections of the instrument that set up the Commission, as a basis for finding the way forward. For us, we see the driving force for the setting up of the Commission is the search for the truth about our past as the basis for the establishment of a framework for a just, fair and equitable Nigerian society”.²⁰⁵

The challenges and pitfalls of the Commission were not only pronounced but also extensive at the beginning, so it had to rely on agencies and governments for assistance. When the Oputa Commission commenced, it had to depend on the Centre for Democracy & Development (CDD), which had considerable experience on issues of transitional justice and accountability for past abuse. It provided necessary logistics for the Commission in collaboration with the Swedish based International Institute for Democracy & Electoral Assistance. They organised a special retreat for members of the Oputa Commission with the intention of networking and sharing comparative experience with experts from other countries who had been involved in past TRCs. The intervention of the CDD at that point in time helped bring civil society into contact with the Oputa Commission's work. The Centre helped organise interactive sessions, meetings and seminars for the Oputa Commission and this helped bridge the gap between the Commission and stakeholders in the country.

At the time that the Commission requested for memorandum from victims of gross violation of human rights, it just had a small office tucked away inside of the rooms at the Office of the Head of Service at the Federal Government Secretariat, Abuja. Here petitioners from all over the country and beyond, most of

²⁰⁴ Report of Oputa Commission, “Introduction” To Chapter 1.

²⁰⁵ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman’s Foreword)*, Op. Cit, 33-34.

them indigent, sent their petitions to the office for scrutiny. One of the immediate predicaments of the Commission was the absence of zonal collation centres, as they had made no formal arrangements for assisting petitioners with their inquiries and complaints. Similarly, it did not employ the services of statement takers a clear departure from the SATRC and those of other countries, where statement takers visited rural communities to take statements from victims of gross human rights violations.

The Secretariat's indifference to proper arrangements placed a lot of stress on victims who wanted to submit petitions. Another challenge was the inefficiency of the postal system in Nigeria. It was at this point that civil society was able to assist in moving the Commission forward. These human rights institutions including civil liberties organisations, the constitutional rights project, and committee for the defence of human rights turned their offices across the country into collation centres. They also helped petitioners prepare their petitions at no charge. The majority of petitions received by the Commission came from the Ogoni region in the Niger Delta. The Movement for the Survival of the Ogoni People (MOSOP), the umbrella body for the Ogonis helped the petitioners to prepare the petitions.

At the close of public hearings, the Oputa Commission invited submissions as well as recommendations from various human rights organisations in the country. These organisations presented detailed accounts of experiences of both their members and Nigerian society at the hands of security agencies in Nigeria. These submissions helped the Commission conclude that these security agencies were responsible for arbitrary arrest, detention, and torture during the period under review.²⁰⁶ Despite its shortcomings, the Oputa Commission enjoyed tremendous support from civil society in Nigeria. These were some of the initial challenges and pitfalls encountered by the Commission.

In the end, the Commission came up with a six-volume report including conclusions, findings and recommendations. In addition, zonal public hearings were set up in Abuja, Lagos, Port Harcourt, Kano, and Enugu respectively. Petitions

²⁰⁶ *Human Rights Violation Investigation Commission (2002) Draft Synoptic Overview of HRVIC Report, Conclusions and Recommendations, Chapter 2, Para. 63 – 8.*

heard during the session were 340, petitions struck out 49, and those withdrawn 10.²⁰⁷ The Commission found that ‘military rule has proved to be a cure that was worse than the disease’ and this much was admitted or conceded by military officers who appeared before the Commission. It also established that military rule left, in its wake, a sad legacy of human rights violations, stunted national growth, a corporatist and static state and increased corruption, destroying its own internal cohesion in the process of governing, and posing the greatest threat to Nigerian democracy and national integration. Taking into cognizance the references made by the Oputa Commission in its report on the scourge of corruption in Nigeria, this thesis will briefly discuss this malaise in relationship to the Oputa Commission.

Even though the Commission in its report recognised that corruption was a major vice practised by the military alongside human rights violations, the Commission was not granted the mandate to investigate the corrupt practices of the military regimes. The reason for this omission is obvious as the various military regimes indulged in monumental corruption salting away billions of dollars earned from oil revenue and looting the treasury of Nigeria. The military catapulted corruption into an art and a state policy. This they did with the connivance of the civil service, political class and the traditional rulers. Afam Nkemdiche a Columnist in “The Guardian Newspaper”, in his article titled Corruption, truth and reconciliation dated 27 October 2016 wrote as follows:

“This deliberate falsification of our history is the worst form of corruption confronting Nigeria, because it distorts the healthy development of the present and future generations of Nigerians for purely selfish reasons. Eradicating corruption from Nigeria would take much more than running after allegedly corrupt persons. As the experience of similarly circumstanced climes clearly shows, the effective eradication of corruption in a polity is subsumed in Truth and Reconciliation”.²⁰⁸

²⁰⁷ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Foreword)*, Op.Cit.9-10.

²⁰⁸ NKEMDICHE, A. (2016, October 27). “Corruption, Truth and Reconciliation” *the Guardian Newspaper*.

With benefit of hindsight, this thesis will posit that the Oputa Commission in the way and manner that it operated and with the deficiencies in the staffing and resources may not have been able to investigate cases of corruption even if it had the mandate. Corruption is a sophisticated crime that requires enormous resources to tackle and in the case of Nigeria where it had reached pandemic proportion and rooted at the top the task would not have been more arduous. In his study titled “An appraisal of the legal and institutional framework for combating corruption in Nigeria” Nlerum S. Okogbule (Department of Jurisprudence and International Law, Faculty of Law, Rivers State University of Science and Technology, Port Harcourt, Nigeria) discovered “that the earlier statutory enactments have proved ineffective in combating corruption in contemporary Nigeria, hence the enactment of the Corrupt Practices and other Related Offences Act, 2000 and the Economic and Financial Crimes Commission Act, 2004, with the objective of dealing with various aspects of corruption. The implication of this finding is that to be effective, legislative measures to tackle corruption must take cognizance of the multifarious nature of the menace coupled with the requisite political will to enforce the provisions of such statutory enactments”.²⁰⁹

The Oputa Commission finally came up with findings and recommendations to help victims of human rights violations in the country, and the government of Olusegun Obasanjo overlooked this. As earlier mentioned in this chapter, the Commission suggested the efficacy of symbolic reparation. Though in practice, addressing the past involves emotions, which may lead each side to demand justice, which may in turn impose unbearable costs on the party found guilty.²¹⁰

This means that there is a need for government to acknowledge the sufferings of victims of past human rights violations because some of them paid the supreme price with their lives. Therefore, it would be appropriate to recognise

²⁰⁹ OKOGBULE, N.S., 2006. *An Appraisal of the Legal and Institutional Framework For Combating Corruption in Nigeria*. *Journal of Financial Crime*, 13(1), 92-106.
<https://doi.org/10.1108/13590790610641251>.

²¹⁰ CHICUECUE, N.M., 1997. *Reconciliation: the Role of Truth Commissions and Alternative Ways of Healing*. *Development in Practice*, 7(4), 483-486.

their worth and suffering if the government recognised their birthdays or the day they died as national holidays. The government should also recognise victims' pain by establishing national monuments to immortalise them. Unfortunately, the government of President Olusegun Obasanjo jettisoned the idea on the grounds that there was no money.

The effect of this means that the government was not sincere with the programme of a truth and reconciliation commission. As a consequence of the government's action aggrieved civil liberty groups, the National Democratic Coalition (NADECO) and opposition party of the Yoruba states proclaimed and instituted June 12 as a Democracy Day, and a public holiday in honour of the struggle of Moshood Abiola, who won the election on June 12, 1993 that was annulled by the military, and subsequently died in defence of democracy with several pro-democracy activists.

In Yoruba states, Moshood Abiola Polytechnic and Abeokuta Stadium were established by the governors of Ogun State, not the federal government of Nigeria. The insincerity of the Obasanjo administration came to public attention when he declared that May 29 would be democracy day instead of June 12. For this singular act the civil liberty organisation and its affiliates challenged Chief Obasanjo's behaviour, because he benefited from the struggle of June 12, 1993 without participating in it and without June 12, 1993, there would not have been the Obasanjo administration of May 29, 1999 in Nigeria.

Secondly, the Oputa Commission suggested, to the government, the need for material assistance to victims of human rights violations in the country. Though material assistance and compensation in the form of monetary payments do not in any way compensate for the loss of loved ones in police or prison custody, or for many years of incarceration. This argument centred on the fact that many victims as well as survivors were in dire need of financial assistance to make ends meet, or to seek medical treatment for injuries sustained while in custody. The Commission suggested that the President as a matter of urgency establish a National Human Rights Trust Fund²¹¹ to cater for the claims of victims.

²¹¹ *There Will Also Be A Need For An Independent Body of Recognised Competence To Oversee the Activities of the Fund.*

Money from this fund should not only be used to pay claims but also to support appropriate institutions whose activities contribute to democratic consolidation, especially building a culture of human rights.²¹² Contributions from the fund could be obtained from the national budget, international donor community, local and multinational businesses, monies recovered from corrupt public officials, and from interest earned.

On the issue of monetary compensation, the Commission recognised there was a temptation to dismiss claims by victims as unrealistic, given the huge sums involved. The criteria for determining the amount of compensation need to be carefully addressed; however, this should not diminish the intrinsic value of the principle itself, stated in the universal declaration of human rights, that everyone has the right to an effective remedy.²¹³ Justice has to be forthcoming for the victims of human rights violation, irrespective of concerns about resources. The government unfortunately did not heed this advice.

The Kenyan Truth Commission when among the recommendations the reparations for victims, public apologies, and a judicial review of possible perpetrators, who are mentioned by name, including the commission's own chair, also recommended this compensatory style to President Uhuru Kenyatta²¹⁴.

The Oputa Commission equally suggested access to free psychological and medical services to help victims and survivors of human rights violations in the country. The money for such services ought to be paid by the state. A proper referral system should also be set up to the effect that psychological services would be accessible to victims in rural areas. Unfortunately, the Oputa Commission's report and recommendations were not formally released by the government and therefore not implemented.

This chapter contends that the Obasanjo government jettisoned the work of the Commission for political consideration, since the Commission recommended punitive measures against some powerful people in society who

²¹² See For Example, National Human Rights Commission, Legal Aid Council, Human Rights Non-Governmental Organizations, etc.

²¹³ Article 8 of the Universal Declaration of Human Rights.

²¹⁴ LANGER, J., 2017. Are Truth Commissions Just Hot-Air Balloons? A Reality Check On the Impact of Truth Commission Recommendations. *Desafíos*, 29(1), 177-210.

were indicted in its report, and this is likely to vitiate the amnesty secretly granted to Abubakar's regime.

The lessons to be learnt from the Oputa Commission are wide-ranging. First, the fact that a government established a truth commission (TRC) does not necessarily mean that it would willingly implement its report, perhaps not until civil society groups and human rights organisations mount pressure on the government to release and implement such a report. However, for Kenya, due to the refusal of parliament to discuss the report, there has still been no public dissemination of the report.²¹⁵

Second, a truth and reconciliation commission, such as the Oputa Commission, could be inaugurated by government and allowed to die in the middle of its work, for lack of political will and financial constraints. Third, a TRC could also be set up on political grounds, to divert attention from pressing issues of governance, and the Oputa Commission suffered all of these challenges in its quest to address human rights violations and the atrocities of military rule in Nigeria. Such reflects Kenya as an example of a society in transition that is focusing its national energy on acknowledging and amending historical injustices as a way of building a democracy.²¹⁶

Funding a truth commission is a significant challenge. The challenges of most commissions are a shortfall in funds, and this was one of the recurring problems faced by the Oputa Commission. Perhaps the government had no idea that the work of such a commission was capital intensive; even when it became increasingly clear that the government must commit large sums of money if it wanted an effective truth commission, the Nigerian government refused on the grounds of paucity of funds and poor economy. Thus, the rhetoric of lack of funds was the bottom line throughout the life of the Oputa Commission. The limited funds at the disposal of the Commission made it impossible to provide any elaborate witness protection scheme or even provide legal aid for poor victims.

²¹⁵ LANGER, J., 2017. *Are Truth Commissions Just Hot-Air Balloons? A Reality Check On the Impact of Truth Commission Recommendations*. *Desafíos*, 29(1), 177-210.

²¹⁶ BARKAN, E., 2009. *Introduction: Historians and Historical Reconciliation*. *the American Historical Review*, 114(4), 899-913.

Similarly, payment of allowance for the commissioners and others working for the Commission was always a problem. Actually, if it had not been for the lifeline provided by the United Kingdom's Department for International Development, the Commission could not have completed its report and met its financial commitment and significantly, the Commission could not finance interpreters or any form of counselling for traumatised witnesses.

Apart from the government starving the Commission of funds, it did not have committed staff or a funding strategy within and outside the country. During the period under study, staff and commissioners could not follow up on a pledge made by the German government to commit funds to a presidential fund for reparation, and this had a telling effect on the Commission's finances. It also failed in its bid to use the initial goodwill and commitment of the international community and donor agencies to the benefit of the Commission.

It is on record that this researcher once negotiated generous funding for some of the Commission's activities from the Friedrich Ebert Foundation, which gave provisional approval, but the Commission could not meet with the Foundation to discuss and approve the proposal. Through incompetence on the part of the commissioners, the Commission lost substantial funding which would have facilitated its work. The financial neglect of the Oputa Commission by the administration of President Obasanjo, coupled with lack of skill and commitment by both the commissioners and staff in fund raising, made it difficult for the Oputa Commission to attract reasonable funding from donor agencies.

This study established the fact that human rights violation in Nigeria was caused by military rule from 1966 to 1999, as already seen in Miners (1971)'s, *The Nigerian Army 1956–1966*,²¹⁷ Elaigwu (1985)'s, *Gowon: The Biography of a Soldier-Statesman*,²¹⁸ and *History of the Nigerian Army 1863–1992* (1992),²¹⁹ Uwechue (1971)'s, *Reflections on the Nigerian Civil War: Facing the Future*,²²⁰ and Ojiako (1979)'s, *13 Years of Military Rule 1966–1979*²²¹ in chapter one, discussed in two

²¹⁷ Ibid.

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ Ibid.

²²¹ Ibid.

and three. It also found that the Oputa Commission did its best within the limit of its mandate, considering the ethnic configuration of the Nigerian state. The TRC achieved its objectives based on its terms of reference by reconciling some ethnic groups that had petitions. The prolonged military rule in the country was due largely to the greed of the military elite and the support of the political class. From the testimonies of senior military officers and those allegedly involved in plotting coups and investigations, it was clear that rich and powerful civilians played critical supportive roles in destabilising the political process and preparing the way for military coups that overthrew various civilian and military regimes.

As part of the recommendations, this chapter suggests that Nigeria could only develop as a nation by abandoning ethnic politics and religion. Therefore, religion and ethnicity should be expunged from the constitution. Military rule was inimical to national development; therefore, a total ban on plotting coups should be entrenched in the Nigerian Constitution, since it was aimed at wealth accumulation, corruption and human rights violations; this was reviewed from the writings of Oarhe and Aghedo (2010),²²² Oluwaniyi (2011),²²³ Onuoha (2009),²²⁴ Ogundiya (2010),²²⁵ and Bello and Odusote (2013),²²⁶ in chapter two.

The chapter opined that the Oputa Commission brought perpetrators of human rights violations to justice by facing their victims in the public domain and this was the greatest achievement derived by Nigerians in the exercise.

Though the Commission may have fallen short in bringing about absolute or total truth and reconciliation, it succeeded in revealing the complicity of the State in past human rights violations, thus one can safely argue that the Oputa Commission was not a waste of time or a diversion of attention by the government;²²⁷ otherwise civil society and well-meaning individuals would not be calling on the government to release the report.

²²² Ibid.

²²³ Ibid.

²²⁴ Ibid.

²²⁵ Ibid.

²²⁶ Ibid.

²²⁷ ONYEGBULA S. C. (2002) *Understanding the Oputa Commission, This Day (Online)*, October 25, [Online] Available at (<http://Wwww.Thisdayonline.Com/Archive/2001/01/18/20010118com02.Html>).

CHAPTER FIVE

LESSONS OF THE OPUTA COMMISSION FOR COUNTRIES IN TRANSITION

5.1 Introduction

This chapter focuses on the lessons learned from the Oputa Commission on the transitional justice mechanism¹ for Nigerians, as well as providing a possible framework for other nations dealing with conflicts and/or human rights violations. Nigeria faces a huge challenge of unity and national development which, according to Akenyere R.T, is due in part to the colonial rule that not only distorted the social system of the people but also truncated the political culture of the communities and their boundaries². As Charles (2004) notes:

Truth commissions are deemed to heal social wounds among former enemies or divided ethnic groups. In short, transitional justice has not only brought satisfaction to some victims, but also transformed world politics and notions of righteousness.³

The lessons of TRCs worldwide cannot be overemphasised, not just as a working document or a legacy of reconciliation but as a pragmatic instrument for “how a society reckons with past human rights violations committed by predecessor regimes or during a conflict”.⁴ It is from this paradigm therefore that

¹ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman’s Foreword)*. Presented To President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo GCFR Submitted By Human Rights Violation Investigation Commission, May, 2002 Summary, Conclusions and Recommendations (Accessed 5 May 2017).

² Ibid.36.

³ CALL, C.T., 2004. *Is Transitional Justice Really Just?* Brown J. World Aff. 11, .101.

⁴ See Roht-Arriaza, N. ‘the New Landscape of Transitional Justice’ in ROHT-ARRIAZA, N., & MARIEZURRENA, J. eds. 2006. *Transitional Justice in the Twenty-First Century: Beyond Truth Versus Justice, 2. Also Defined As Associated With Periods of Political Change [and Aimed At Confronting] the Wrongdoings of Repressive Predecessor Regimes*, TEITEL, R. 2000. *Transitional Justice*, 69. Also ADEYEMO, D.D., 2013. *Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt?* (Doctoral Dissertation, University of Western Cape).28 October 2013; Ictj –What Is Transitional Justice? Available At [Http://Ictj.Org/About/Transitional-Justice](http://Ictj.Org/About/Transitional-Justice) (Accessed September 2013).

transitional justice in its broadest sense refers to the changeover from a repressive, armed conflict society into a social justice system that prevent future human rights atrocities.⁵ Furthermore, a discussion of the effects of ethnic politics on the survival of democracy is highly desirable.⁶

Recent atrocities in the modern era have resulted in a push for justice, rule of law and compensation for victims of human rights violations, particularly in war torn regions of Africa and other developing countries from around the world.⁷ Thus, it is critical that countries adapt a successful transitional process that is based on past successes and failures.⁸ For instance, the Nigerian government conducted a comparative analysis of truth commissions from the South Africa, Argentina, Chile, Guatemala Liberia, Rwanda Uganda, and Ghana.^{9,10} The Nigerian government found that the accumulation of grievances and threats of revenge escalated in conflicts and human rights violations. As a best practice for their own truth commission, the Nigerian government ensured that the transitional justice process went as quickly as possible in order to avoid the colossal damage to life and property, as well as further human rights violations.

This chapter analyses transitional justice, peace building and conflict resolution in the Nigerian context. As the Chairman of the Oputa Commission notes:

⁵ CALL, C.T., 2004. *Is Transitional Justice Really Just?* Op. Cit. 101-113.

⁶ Ibid.37.

⁷ *Examples of Nations in Search of Justice, Rule of Law and Compensation For Victims, As Well As Models Include South Sudan, Mali, Morocco, Cameroun and Myanmar, To Mention A Few. These Nations Are Presently Engulfed in Political Instability, Ethnic and Religious Crises.*

⁸ FARLEY, M.K. 2008. *Identity in Transition: Towards A Conceptualization of the Socio-Political Dynamics of the South African Truth and Reconciliation Commission*, Doctoral Dissertation, University of Cape Town; ROSENBERG, T., 1999. *Afterword: Confronting the Painful Past. Coming To Terms, South Africa's Search For Truth*, 327. See details in STACEY, S. 2004. *A Lockean Approach To Transitional Justice. the Review of Politics*, 66(01), 55-82; DUGGARD, J. 1997. *"Retrospective Justice: International Law and the South Africa Model"*. in MCADAMS, A. J. ED. *Transitional Justice and Rule of Law in New Democracies*, 270. Also See VALJI, N., 2006. *Ghana's National Reconciliation Commission: A Comparative Assessment. International Center For Transitional Justice, Occasional Paper Series*, New York. Retrieved [Http://Www.Ictj.Org/Static/Africa/Subsahara/Ghanacommission.Pdf](http://www.ictj.org/static/Africa/Subsahara/Ghanacommission.Pdf). (Accessed On August 10 2017).

⁹ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations, Vol.1, Chapter 1, 7. Details in Vols. 2 & 5.*

¹⁰ COREY, A. AND JOIREMAN, S.F., 2004. *Retributive Justice: the Gacaca Courts in Rwanda. African Affairs*, 103(410), 73-89.

The main objective of this major undertaking is to document for posterity details of human rights violations in this particular significant period in the development of Nigeria. It is also to help to unveil the nature, character and dynamics of human rights violations that might have occurred in each of the geopolitical zones, as well as provide details about the involvement of key agencies of the State, such as the police, the prisons, the military and other security agencies, in the violations of the rights of Nigerians.¹¹

The utility of transitional justice mechanism has elicited much discussion among scholars,¹² particularly its efficacy regarding the problems of human rights violations.¹³ The human rights violations were discussed in chapters one, two and three, in The Human Rights Violation Investigation Commission Report (May 2002),¹⁴ and Shriver (1995), in *An Ethic for Enemies: Forgiveness in Politics*.¹⁵

According to Charles (2004), “Transitional justice has captured much of the attention in recent thinking about human rights, partly because so many countries have in recent years become ‘transitional societies’ and partly because such societies offer unusual opportunities to capture and punish perpetrators”.¹⁶ Consequently, Javier (2006) has argued that:

¹¹ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit.

¹² See TEITEL, R.G. 2000. *Transitional Justice*. New York: Oxford University Press, 1-305, Online Bookfi.Net (Accessed 4 September 2017); HAYNER, P.B. 2011 (2nd Edn.). *Unspeakable Truths: Transitional Justice and the Challenge of Truth Commissions*. New York and London: Routledge, Taylor and Francis Group. *Isbn O.203-86782- 3 Master E.Book .Bookfi.Net* (Accessed 04/9/17). 1-377; ARTHUR, P., 2011. *Identities in Transition: Challenges For Transitional Justice in Divided Societies*. Cambridge University Press: Cambridge, 1-392.

¹² OLSEN, T.D. AND REITER, A.G., 2010. *Transitional Justice in Balance: Comparing Processes, Weighing Efficacy*. United States Institute of Peace. OLSEN, T.D., PAYNE, L.A., & REITER, A.G., 2010. *Transitional Justice in the World, 1970-2007: Insights From A New Dataset*. *Journal of Peace Research*, 47(6), .803-809; REITER, A.G., OLSEN, T.D., & PAYNE, L.A., 2012. *Transitional Justice and Civil War: Exploring New Pathways, Challenging Old Guideposts*. *Transitional Justice Review*, 1(1), 137-169; BAINES, E. 2010. *Spirits and Social Reconstruction After Mass Violence: Rethinking Transitional Justice*. *African Affairs*, 109(436), .409-430.

¹³ Oral Interview With Professor Ndubuisi Francis, 60+ Years, Lecturer, Christopher University, Mowe, Ogun State, 20/9/2017.

¹⁴ Ibid.

¹⁵ Ibid.

¹⁶ CALL, C.T., 2004. *Is Transitional Justice Really Just?* 101-113. Op. Cit.

Transitional justice is a contested and evolving process, which emerged in the 1990s. It is understood as a set of practices, mechanisms and concerns that arise following a period of conflict, civil strife or repression, and aimed directly at confronting and dealing with past violations of human rights and humanitarian law.¹⁷

In the same vein, Kimathi (2010) ventured that transitional justice, therefore, is concerned with the whole range of mechanisms and approaches applied by states or societies that seek to transform, heal, and transit from illegitimate and repressive rule or situations of conflict to national reconstruction and good governance.¹⁸ In its contribution on the utility of transitional justice mechanism, KHRC (2009) provided a menu of what a transitional justice mechanism can attempt to achieve. This recommendation includes legal policy and constitutional reforms, prosecutions, reparations, lustration measures, reconciliation and peace building measures, memorialisation, and truth commissions, among others.¹⁹

The option of Truth and Reconciliation Commissions (TRCs) has been exploited by a number of countries with different outcomes and results. Some of these countries include South Africa,²⁰ Ghana,²¹ Liberia, Sierra Leone, Rwanda²²

¹⁷ ROTH, A AND JAVIER, M (2006) *Transitional Justice in the Twenty First Century*. Cambridge University Press: Cambridge.

¹⁸ KIMATHI, L., 2010. *Whose Truth, Justice, and Reconciliation? Enhancing the Legitimacy of the Truth, Justice and Reconciliation Commission Among Affected Communities in Kenya*. Nairobi: the International Peace Support Training Centre.

¹⁹ KENYA HUMAN RIGHTS COMMISSION ET AL (2010) *Transitional Justice in Kenya: A Toolkit For Training and Engagement*. Zand Graphics: Nairobi.

²⁰ FARLEY, M.K. 2008. *Identity in Transition: Towards A Conceptualization of the Socio-Political Dynamics of the South African Truth and Reconciliation Commission*, Doctoral Dissertation, University of Cape Town; ROSENBERG, T. 1999 *Afterword: Confronting the Painful Past*. in M. Meredith, *Coming To Terms: South Africa's Search For Truth*, .327. Also See STACEY, S. 2004. *A Lockean Approach To Transitional Justice. the Review of Politics*, 66(01), .55-82; DUGGARD, J. 1997. "Retrospective Justice: International Law and the South Africa Model". in MCADAMS, J. ED. *Transitional Justice and Rule of Law in New Democracies*, .270.

²¹ VALJI, N., 2006. *Ghana's National Reconciliation Commission: A Comparative Assessment*. International Center For Transitional Justice, Occasional Paper Series, New York. Retrieved (<http://www.ictj.org/static/Africa/Subsahara/Ghanacommission.Pdf>) (Accessed 10 August 2017).

²² COREY, A. AND JOIREMAN, S.F., 2004. *Retributive Justice: the Gacaca Courts in Rwanda*. *African Affairs*, 103(410), 73-89.

and Chile,²³ as previously mentioned. It was in this regard, therefore, that the Nigerian government decided on this mechanism to come to terms with the problems of human rights violation as perpetrated by the military junta from 1966 to 1999.²⁴ These human rights violations therefore were the reason for commissioning of The Human Rights Violation Investigation Commission Report (May 2002),²⁵ and Shriver (1995)'s 'An Ethic for Enemies: Forgiveness in Politics'²⁶ previously outlined in the reviewed section of literature.

The research of this study is concerned with the followings questions: Does the Oputa Commission offer any lesson(s) of interest? What are the travails of justice as contested by Hakeem O. Yusuf?²⁷ Was the Oputa Commission an unfinished job as argued by Mike Ikhariale,²⁸ or was it a failed attempt in the thinking of scholars like Damilola Adeyemo²⁹ and Elisabeth Guaker?³⁰ (These and other issues will be examined in the section on perspectives and comments.)

The purpose of this chapter is to discuss the lessons from the Oputa Commission offered and how they impacted Nigerians and the events that followed.³¹ Though the Commission was applauded for its role in bringing justice closer for victims of human rights violations, as well as reconciliation to warring communities in Nigeria, events post the Oputa Commission showed that Nigerians were not pleased with the outcome, since the report was not published by

²³ See WILSON, R. J., *Spanish Criminal Prosecutions Use International Human Rights Law To Battle Impunity in Chile and Argentina*, Ko'Agaronete Ser. Iii (1996) ([Http://Www.-Derechos.Org/Koaga/iii/5/Wilson.Html](http://www.-Derechos.Org/Koaga/iii/5/Wilson.Html)). Also See DE BRITO, A. 1997. *Human Rights and Democratization in Latin America: Uruguay and Chile*. Oxford University Press: Oxford, 193.

²⁴ *Report On Oputa Commission, Vol.3* (Accessed 5 May 2017), .2-3.

²⁵ Ibid.

²⁶ Ibid.

²⁷ YUSUF, H.O. 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, Vol.1, 2007, 268-286. Doi: 10.1093/ijtj/ijmo23.268-286.

²⁸ IKHARIALE, M. *the Oputa Reports: An Unfinished Job*. Online <http://www.Nigerdeltacongress.Com/Oarticles/Oputa Reports.htm>, .1-4.

²⁹ ADEYEMO, D.D., 2013. *Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt?* Doctoral Dissertation, University of Western Cape.

³⁰ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen.1-51.

³¹ NWANKWO, C. (2001, October 22) "Beyond the Oputa Rights Violation Panel". *the Punch Newspaper*, 20; Also See BALOGUN, F. (2005, March 8) "We Must Discuss Without Fear". *the Punch*, .15; ONYEKPERE, E. (2014, May). 26) "National Confab, Insurgency and the Political Class". *the Punch Newspaper*, 28,

government because it indicted highly placed military officers and former heads of state.³² The unpleasant side of the Nigerians can be attributed to Joseph's (2014)³³ observatory comments when he argued that the effects of rule by the military government was to accentuate the centrality of the State in the nation's economic system—and thus in a circular fashion—to fuel the various features of prebendalism.³⁴ Therefore, the study can attach the depreciation of the commission's work to the iron hand of the military rule in Nigeria at the time.

Specifically, this section of the chapter discusses the impact and lessons from the Oputa Commission. This chapter offers critical lessons to both the Nigerian people and nations in transition on how to resolve the problems of victims and perpetrators of human rights violations in an acceptable fashion.³⁵

In light of the previous chapter, this chapter is divided into three main sections and subsections. The first is the anatomy of the Oputa Commission. The second is findings and recommendations of the Oputa Commission. The third is the impact and lessons of the Oputa Commission. The final section is the conclusion.

The mechanism of the Oputa Commission has attracted the attention of several scholars who have questioned the limited success of the Commission. A few even have attributed the failure of the Commission to the nature of its structure and composition. While others believe that the twin problems of mandate and composition affected the overall workings of the Oputa Commission. Our interest here is to understand and to explain the workings of the Commission, particularly the terms of reference and its mandate.³⁶

³² General's Mohammadu Buhari, Badamosi Babangida, and Abdul Salami Abubakar. Colonel (Halilu) Akilu, and Lt Colonel (A.K) Togun. Details in ODUNUGA. Y. (2002, October) 17) "Why We Haven't Implemented Report Govt". *the Punch Newspaper*, 1, 9. Also See "Cover Story" (2006, August 28) *Tell Magazine*, .21.

³³ Ibid.

³⁴ Ibid.40.

³⁵ Hayner, P.B., 2010. *Unspeakable Truths 2e: Transitional Justice and the Challenge of Truth Commissions*. Routledge: New York.

³⁶ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286. Also See, ADEYEMO, D.D., 2013. *Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt?* Doctoral Dissertation, University of Western Cape; <https://youtu.be/Xqsjiqbuvy?List=Rdh-Xjogecrlc.1-51>.

Others point to views, comments, and perspectives on the Oputa Commission from the media, the Nigerian populace, and scholarly journals. A few individuals also delved into the forces and factors that worked against the Commission. These included the Supreme Court of Nigeria and civil liberty groups contesting the constitutionality of the Oputa Commission, the financial constraints, under staffing, and the lack of compensation and reparation, among others. Interestingly, though some of these challenges were, also manifest in Kenya's transitional justice because notably, while President Kenyatta made a public apology in 2015 and announced that he would establish a victims' fund.³⁷

5.1.1 Mechanism of the Oputa Commission

This thesis maintains that the Oputa Commission had an extensive mandate to achieve its objective. The shortcomings of the Commission were not as the result of the deficiencies in its mandate, but rather it was due to the lack of strong legislation such as an Act of Parliament like its precursor SATRC and those that came later including Liberia, Ghana and Kenya. Other shortcomings included the paucity of funds available to the Commission and the staffing challenges. These factors, rather than the mandate weakened the Commission, indirectly affected its output.

The work of the Oputa Commission is critical in the analysis of transitional justice mechanism in Nigeria and perhaps the theories and dynamics of truth commissions in Africa. Its import is located in the thinking and statement of the Chairman: "... its establishment was an attempt to lay the groundwork for an enduring and sustainable peace and development in the country, founded on the concepts and principles of human rights, equality, justice and reconciliation".³⁸

It can be argued that Obasanjo's administration did not fully comprehend the enormity of the work of a truth commission and its challenges before

³⁷ LANGER, J. (2017). *Are Truth Commissions Just Hot-Air Balloons? A Reality Check On the Impact of Truth Commission Recommendations*. *Desafíos*, 29(1), 177-210.

³⁸ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit. 19, Chapter 1, Vol.1.

embarking on the project.³⁹ These daunting challenges included the Colonial powers' entrenchment of ethnicity and tribalism through its regionalisation policy⁴⁰ that failed to establish a pan Nigerian agenda for the nation.⁴¹ The human rights violations perpetrated by military dictators from 1966 to 1999 resulted in the establishment of the Oputa Commission in Nigeria. The Commission was well-received by Nigerians due to the fact that Nigerians had long yearned for truth and justice for victims of human rights violations⁴², as well as the opportunity for the prosecution of perpetrators and their accomplices.⁴³

The Commission in its report noted that prior to its inauguration the government was anxious over the sort of accountability process the country would explore considering the nature of Nigeria's composition, ethnicity, and domination.⁴⁴ According to the Chairman of the Commission:

The option chosen will depend on what each truth commission is set up to accomplish. In the case of Nigeria, the terms of reference, including the President's address to the Commission, centred on forgiveness and reconciliation. Our quo warrant is the search for this reconciliation.⁴⁵

The Chairman also stressed that, "in our comparative analyses, it was only in Argentina that there were criminal prosecutions of members of the military junta and their collaborators for gross human rights abuse. In the other four cases (i.e. Chile, Guatemala, South Africa and Uganda), the aim was for people to know what happened in their respective countries during the days of military rule".⁴⁶ According to Guaker (2009):

³⁹ GUÅKER, E. 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen, 1-51; PERRY, J., & SAYNDEE, T.D. 2015. *African Truth Commissions and Transitional Justice*. Lexington Books: Lanham.

⁴⁰ Ibid.46.

⁴¹ Ibid.46.

⁴² *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit.

⁴³ Ibid.

⁴⁴ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit.

⁴⁵ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit.8.

⁴⁶ Ibid.

The truth commission's primary function is investigative. The investigative approach was informed by the observation of Ojiako (1980).⁴⁷ Furthermore, their investigations are victim centred and their attention is directed towards the victims' views and experiences, meanwhile witnesses and perpetrators are secondary. Truth commissions also attempt to paint a picture of overall abuse within a defined period.⁴⁸

The appointment of members of the Commission was also problematic due to the lack of consultative and transparent process. Perhaps part of the challenges experienced by the Commission further arose from its inability to carry out effective consultation among interest groups and stakeholders on the workings of a truth commission and its goals.

Unfortunately, the Commission's attempt at comparative analyses of other truth commissions worldwide in order to discover the ideal transitional justice model for Nigeria's problems, including the question of compensation, reparation and punishment⁴⁹, did not yield many results compared to the assurances of the Commission. This failure was extensively discussed by Gauker, Kukah and Yusuf (2007)⁵⁰ as seen in chapter one and discussed in the following chapters.

5.1.2 The question of terms of reference of the Oputa Commission⁵¹

The powers of the Commission are contained in the Tribunals of Inquiry Act, Cap 447. According to Akhihero, the law is clearly the Commission's Magna Carta from where it derives its jurisdiction and powers. The terms of reference of the Commission are made pursuant to Section 1(2) (a) thereof. Section 5 contains the powers of the Commission with regard to the conduct of proceedings, while sections 10 to 12 provide for penalties for refusal to give evidence and contempt of the Commission.⁵² The terms included the following: First, 'to ascertain or

⁴⁷ Ibid.50.

⁴⁸ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*, Master's Thesis, the University of Bergen.1-51.

⁴⁹ *Oputa Commission, Synoptic Overview, Op.Cit. Vol. 6, Chapter 1, 1-3.*

⁵⁰ Ibid.

⁵¹ Ibid.

⁵² AKHIHERO, P. 2001/2002. *the Constitutionality and Powers of the Human Rights*

establish the causes, nature and extent of all gross violation of human rights committed in Nigeria from 15th January 1966 to 28th May 1999'. Second, 'to identify the person or persons, authorities, institutions or organisations which may be held accountable for such gross violation of human rights and determine the motives, the victims and circumstances thereof, and the effect on such victims and the society in general.

Third, to determine whether such abuses or violations were the product of deliberate state policy or the policy of its organs or institutions or whether they arose from abuses by state officials of their office or whether they were the acts of any political organization, liberation movement or other groups or individuals.

Additionally, to recommend measures which may be taken, whether judicial, administrative, legislative or institutional to redress past injustices and to prevent or forestall future violation or abuse of human rights, and finally, to make any other recommendations which are, in the opinion of the Judicial Commission, in the public interest and are necessitated by the evidence. Furthermore, to receive any legitimate financial or other assistance from whatever source which may aid and facilitate the realisation of its objectives.

The amended terms of reference of the Commission were timely because it gave the Oputa Commission powers to 'command and enforce' the attendance of witnesses,⁵³ with a view to meeting current realities and international standards. Lewis (1994) argued that a lacklustre democratic movement had weakened political institutions and, in the process, fragmented civil society. This resulted in tenuous foundations for the revival of democratic pressures or the implementation of a workable political transition.⁵⁴ The powers of the commission were but inevitable for usage to make possible witness attendance. Nevertheless, more important was the view of ensuring that it acquired the status of a truth and reconciliation commission.⁵⁵ The reason could also be located in the complexity

Violation Human Investigation Commission (Oputa Panel). University of Benin Law Journal, 7(1), 116-135.

⁵³ *Human Rights Violation Investigation Commission, 2007.HRVIC Report, Conclusions and Recommendations, Synoptic Overview. Unpublished, Available From [Http://Www.Nigerian Muse. Com/Nigeria Watch/Oputa](http://www.NigerianMuse.Com/NigeriaWatch/Oputa). 28.*

⁵⁴ *Ibid. 56.*

⁵⁵ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and*

and varied nature of our society. It was also visible in the events that led to human rights atrocities of military rule,⁵⁶ political instability, and the quest for succession.

Therefore, specific amendments include the reference in terms of references (a) and (b) in the amended instrument to “gross violations of human rights...” as opposed to the more specific reference to “...all known or suspected cases of mysterious deaths and assassinations or attempted assassinations...” in terms of references (i) and (ii) in the original terms of reference. Same as the stipulation, in terms of reference (a) of the amended instrument, of the period to be covered by the Panel (later) Commission to be “between 15th day of January 1966 and 28th day of May 1999,” as against the stipulation in terms of reference (1) in the original terms of reference to the period “since the last democratic dispensation in the country”. The addition of terms of reference (e) and (f), which were not in the original terms of reference, to the amended instrument; and finally the absence in the original terms of reference of the requirement, contained in the amended instrument for the Panel/ Commission to submit interim reports and its final report “not later than one year from its first Public Sitting or within such extended period as may be authorised by [the President] in writing.

In the first terms of reference, the Oputa Commission was established to investigate human rights violations from 1983 to 1998 but was amended to cover “between 15th day of January 1966 and 28th day of May 1999”.⁵⁷ Human rights groups and its affiliates including the politicians criticized the reference as not only restrictive but limited because it did not cover the period of the Nigerian Civil War and several periods of military rule such as the Gowon and Obasanjo/ Murtala regimes.⁵⁸ The amended terms of reference was intended to give the Commission

Recommendations, Op.Cit.

⁵⁶ FAMOROTI, F. (2000, February 9) “Rogers Ends Testimony in Bamaiyi’s Trials”. *the Punch Newspaper*, 1-2. Also See OLADIPO, D. (1999, October 25) “in the dock”. *News Watch Magazine*, 8-11.

⁵⁷ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations (Including Chairman’s Foreword)*, 31, Vol. 1, Chapter 1.

⁵⁸ See SIOLLUN, M., 2009. *Oil, Politics and Violence: Nigeria’s Military Coup Culture (1966-1976)*. Algora Publishing: New York; JOSEPH R.A. 1999. *Democracy and Prebendal Politics in Nigeria: the Rise and Fall of the Second Republic*. Ibadan: Spectrum Books Ltd; OJIAKO, J.O. 1980. *Thirteen Years of Military Rule, 1966-1979. A Daily Times Publication*; FALOLA, T., et al. 1991. *History of Nigeria, Vol.3, Nigeria in the 20th Century*. Longman Publishers

the latitude to cover the entire period of military rule and perhaps expose the atrocities perpetrated during the era. It was also aimed at guiding against public assumption that the Commission targeted a particular ethnic group or administration.

The Commission was initially given three months to submit its report, but the period was extended to twelve months because of the scope of the work. It eventually took the Commission twenty-eight months to submit its report. This delay could be attributed to financial constraints, which directly impeded the Commission's work.

5.1.3 Interpretation of mandate⁵⁹

The question of the Commission's mandate⁶⁰ has been explained in Chapter Four of this study, though there was a need to highlight a few points. What was the nature of the Commission's mandate? This will help us to derive some lessons too. Drawing from the Chairman statement as emphasised in one of the zonal public hearings,⁶¹ it was mainly to:

- a) pursue "a policy of openness and transparency in the conduct of government business";
- b) heal "the wounds of the past, to put the ugly past behind;
- c) achieve complete reconciliation based on truth and knowledge of the truth; and
- d) Reconcile "the injured and seemingly injured with their oppressors."⁶²

This was further encapsulated by the Chairman, the mandate of the Panel /Commission was primarily a fact-finding one, namely to investigate the causes, nature and extent of gross violation of human rights in the country between 15th

Nigeria: Ikeja.

⁵⁹ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit. Vol. 6, Chapter 1.

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² *Report of Oputa Commission, "Introduction" To Chapter 1, 32.*

January 1966 and 28th May 1999; to determine the persons, authorities and institutions to be held culpable of violation and their motives in doing so,⁶³ as well as the effect of such violation on their victims, and to determine whether such violation was part of deliberate State policy or the policy of its organs.⁶⁴

Therefore, when we juxtapose the terms of reference and the mandate of the Commission, it was clear that the commission was purely a truth commission like other truth commissions that had taken place worldwide. What is the mission? As the Chairman cogently pointed out, “it was primarily a fact-finding one”. Relying on the perspectives of Guaker (2009): “Truth Commissions are non-adjudicative bodies and typically do not have the powers to sanction or prosecute.... Thus, when a Commission finishes its report further address of the violations identified here is at the hands of the government”.⁶⁵ She also added that: “An affirmative government will actively pursue the implementation of a Commission’s recommendations. Less supportive governments on the other hand have been known to reject the Commission’s findings altogether and even refuse to release the report”.⁶⁶ Extending the idea, Adeyemi (2013) noted that transitional justice proposes measures to redress victims of repression and massive violation of human rights by a state in the past, as a result of authoritarian regimes or internal armed conflict.⁶⁷

Therefore, the Oputa Commission was meant to set a record of fact-finding that would lead to the transformation of the Nigerian society. Thus, the Commission was expected to achieve much reconciliation but was bogged down by ethnic politics, hegemony, and domination. The reconciliation was presented in The Human Rights Violation Investigation Commission Report (May 2002),⁶⁸ and Shriver (1995).⁶⁹

⁶³ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit. 31, Vol. 1, Chapter 1.

⁶⁴ Oputa Commission, *Synoptic Overview of HRVIC Report By the Chairman, Hon. Justice Chukwudifu A. Oputa Cfr Justice Emeritus Supreme Court of Nigeria*, Vol.1, Chapter 1, 32.

⁶⁵ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen, 1-51.

⁶⁶ Ibid.

⁶⁷ ADEYEMO, D.D., 2013. *Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt?* Doctoral Dissertation, University of Western Cape.

⁶⁸ Ibid.

⁶⁹ Ibid.

There were also the factors of institutional decay orchestrated by prolonged military rule in the face of impunity and judicial crisis, coupled with the lack of political will on the part of Obasanjo's government. Thus, the proposition of Professor Mike Ikhariale's "Oputa Reports: An Unfinished Job".⁷⁰ It should be noted that assessment by some commentators of the Commission's mandate as being too narrow to effectively cover human rights violations by past military regimes seemed very flimsy. The position of this chapter is that the Oputa Commission was elaborate and in the words of Guaker, the "Oputa Commission had [an] extensive mandate".⁷¹

What were the suggestions and recommendations of civil society groups and affiliates before and after the commencement of the Commission? If there were suggestions on legal issues and the need for top-notch professionals, why did the Commission not adhere to these suggestions? Considering the long battle faced by civil society groups and affiliates in the last days of Abacha's administration, it was important for the civil society to ensure that the Oputa Commissions report was not abandoned.

5.2 Observations of stakeholders and interest groups

The contributions of some interest groups during the period under study needs to be emphasized in order to identify where the Oputa Commission erred in its duties. According to the Chairman: "The Commission was of the view that there was need to go beyond the mandate, in search of pathways along which the project of nation building must proceed. This is more so, because the Commission is uniquely the best opportunity that Nigerians have had in several years to forge an informed understanding of their country's past".⁷² Adeyemo (2013)⁷³ postulated the necessary building blocks on which a new Nigerian nation would

⁷⁰ IKHARIALE, M. "Oputa Reports: An Unfinished Job," *Online Journal*. [Http://Www. Nigerdeltacongress. Com/Oarticles/Oputa Reports.Htm](http://www.Nigerdeltacongress.Com/Oarticles/Oputa%20Reports.Htm) (Accessed 3/9/2017), 1-4.

⁷¹ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen.

⁷² *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations, 31, Vol. 1, Chapter 1.*

⁷³ Op.Cit. 1-103

rest.⁷⁴ He also added that, “after consultations with a broad spectrum of stakeholders, it became clear to the Commission that the nature of Nigeria’s volatile and fractured history⁷⁵ demands that the Commission’s work should serve as a mirror to reflect the trials and tribulations of our country”.⁷⁶ In view of the above, one can safely argue that the Media Rights Agenda, Civil Liberty Organization (CLO) and Centre for Democracy & Development (CDD) were stakeholders that provided support to the Commission.

It was the CDD that planned with the International Institute for Democracy & Electoral Assistance in Sweden to organize a special retreat for members of the Oputa Commission.⁷⁷ The purpose of the retreat was to initiate discussions of the processes and lessons learned from other truth commissions worldwide. It was these coalition groups that organized seminars and workshops before and during the Commission’s take-off.

There was also the Seminar on the Rights to Compensation, Rehabilitation and Restitution for Victims of Gross Violation of Human Rights, organized jointly by the Human Rights Violation Investigation Commission, Centre for Democracy & Development and Legal Resources Consortium from July 31 to August 3, 2001. The seminar provided an outlet for the various perspectives on reparation for victims.

As robust as the suggestions and recommendations appeared, the Commission was hamstrung by numerous factors including financial constraints,⁷⁸ so much that the Oputa Commission was unable to achieve total justice and total reconciliation for victims of human rights violations in Nigeria. Guäker (2009)⁷⁹ argued that the Commission was a complete failure due to the non-release of its report. Kukah, who was a prominent member of the Commission, had a different view. He concluded that beyond the legal arguments canvassed by the government

⁷⁴ Ibid. Vol.7, 7.

⁷⁵ *Oputa Commission, Synoptic Overview*, Op.Cit. 31, Vol. 1, Chapter 1.

⁷⁵ *For Moredetails See, SIOLLUN, M. 2009.Oil, Politics and Violence*, Op.Cit.

⁷⁶ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit. Vol.7, 7.

⁷⁷ *Centre For Democracy and Development in Collaboration With International Institute For Democracy and Electoral Assistance in Sweden Organised A Seminar For the Oputa Commission, July 31-August 3, 2001.*

⁷⁸ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit.

⁷⁹ Ibid.

to justify its refusal to officially publish the report of the Commission, the Nigeria state missed an opportunity to come to terms with its destiny. Continually, Yusuf (2007)⁸⁰ blamed the many setbacks suffered by the Oputa Commission on bureaucratic red-tapisms while Akhihero on his own questioned the constitutionality and powers of the Commission.

Similarly, the expansion of the Commission as suggested by civil society groups would have enabled it to strike a balance between top-notch professional staff and political appointees on the Commission.⁸¹ This was part of Professor Yadudu's argument when he contended that appointing one Moslem was not enough, considering the population of Nigerian Muslims and the sensitivity of religion in the country.

Civil society groups also observed their exclusion and non-representation.⁸² Thus, efforts to make the Commission appear as a reasonable group by expanding their membership proved futile. Indeed, they argued that a robust representation would have helped the Commission function effectively with its expanded mandate, based on the SATRC,⁸³ from which the Oputa Commission drew comparative knowledge, composed of seventeen commissioners, appointed through a competitive and consultative process which involved civil liberty organizations and relevant sectors of society.⁸⁴ The implication here was there was an absence of total truth and reconciliation for victims of human rights violations.

⁸⁰ Ibid.

⁸¹ ANABA, E. (2001, August 8) "Why Oputa Commission Has Been Inactive", Op.Cit.11.

⁸² YADUDU, A.H. 2001, 'What Is Wrong With Oputa Panel?' (Part ii) *Amana Online* [Online] Available http://www.Amanaonline.Com/Articles/Art_13.Htm

⁸³ FARLEY, M.K. 2008. *Identity in Transition: Towards A Conceptualization of the Socio-Political Dynamics of the South African Truth and Reconciliation Commission*. Doctoral Dissertation, University of Cape Town; ROSENBERG, T. 1999 "Afterword: Confronting the Painful Past". in MEREDITH. M., *Coming To Terms: South Africa's Search For Truth*, 327. Details in DUGGARD, J. 1997. "Retrospective Justice: International Law and the South Africa Model". in A. James Mcadams ed. *Transitional Justice and Rule of Law in New Democracies*, 270.

⁸⁴ Amnesty International. *Nigeria, Time For Justice and Accountability*. London, UK: International Secretariat, 2000. Available At <http://www.Amnesty.Org/En/Library/Info/Afr44/014/2000> (Accessed June 12, 2008)

There were requests for additional commissioners in order to function effectively with its expanded mandate⁸⁵ after the Oputa Commission⁸⁶ and civil society groups conducted a comparative analysis of the structure of commissions in South Africa, Guatemala, and Chile. Thus, the agreed political structure should include a chairperson and a deputy chairperson based at the Commission's headquarters in Abuja, as well as the Chief Executive Officer (CEO) /Chief Accounting Officer (CAO) with the possible provision of an executive secretary to the Commission.

Additional units suggested included a Legal Department, Research and Investigations Unit, Media Liaison Unit, and Logistic and Human Resources Unit.⁸⁷ These were aimed at facilitating the work of the Commission and decentralizing responsibilities to achieve set objectives. The legal and research units would advise the Commission from time to time on legal issues, as was the case with the judiciary (Supreme Court judgment) to clear the hurdles that could impinge its tasks. For instance, were the legal and research units in place, debates whether the Oputa Commission had legal instruments⁸⁸ or whether a truth commission was entrenched in the Nigerian Constitution⁸⁹ (Constitutionality).

The pronouncement by the Supreme Court of Nigeria⁹⁰ as to the legality of the Commission would equally have been settled long before the Commission commenced. It was clear that the Oputa Commission had an elaborate mandate⁹¹ to achieve results, but the political will on the part of government, coupled with the legal issue of constitutionality, and prevented the Commission from

⁸⁵ Oputa Commission, *Synoptic Overview*, Op.Cit. Presented To President, Commander-in-Chief of the Armed Forces of the Federal Republic of Nigeria, Chief Olusegun Obasanjo GCFR Submitted By Human Rights Violation Investigation Commission, May, 2002 Summary, Conclusions and Recommendations (Accessed 5 May 2017).

⁸⁶ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, 7, Vol.1, Chapter 1.

⁸⁷ Centre For Democracy & Development and International Institute For Democracy and Electoral Assistance (2000) *Preliminary Report and Action Plan of the Special Retreat For the Human Rights Violation Investigation Commission*, February 7, 2000.

⁸⁸ Conference Quick Take (2005, April 5) "Yadudu and Illegality," *the Punch Newspaper*, 8.

⁸⁹ OGUNWALE, G., & MOJEED, M. (2005, March 8) "Don't Tamper With Conference Report, Delegates Tell FG," *the Punch Newspaper*, 2.

⁹⁰ OLADIPO, D. (2005, March 8) "Now At the Crossroads". *the Punch Newspaper*, 3.

⁹¹ Oputa Commission, *Synoptic Overview of Human Rights Violation Investigation Commission's Report: Conclusions and Recommendations*.

accomplishing truth and reconciliation. This also affected its report from being published for the consumption of Nigerians, whom it was meant for. The contributions of interest group and civil society groups were commendable. However, the reason as to why some suggestions from stakeholders were not implemented was less understood. Perhaps it was to depart from being tele guided or being perceived as incompetent, faced with the task before it.

A more plausible explanation was due to the fact that they were hindered by financial constraints, professional expertise, and lack of political will. In the same vein, reflecting on Kenya's transition period, their commission registered self-defeat from commencement since it was reported that the agenda for TJRC was lost following the formation of the Government of National Unity on June 30, 2004, through which the government embraced and brought on board some of the KANU leaders expected to be investigated by the TJRC. From then, the struggle for TJRC was left to public actions through forums, litigation, protests and petitions to the three arms of the government.⁹²

The overall effect was the inability of the Commission to attend to all the petitioners and their requests, particularly regarding compensation, reparation, and punishment.

5.3 Views and perspectives on the Oputa Commission

Media reports, published articles, and individual comments on the Oputa Commission not only generated information on the part of the government, military dictators-cum-judiciary and the Commission, but they enhanced our understanding by drawing from the lessons of the Oputa Commission. The Oputa Commission was meant to be a solution to Nigeria's problems, but it was hindered by the powers of hegemony and manipulation of the judiciary.⁹³ Yet Panter-Brick (1978) argued that the debates in 1970 to 1974 produced the famous "diarchy" formula, which would have allowed both military and civilian collaboration and

⁹² KENYA HUMAN RIGHTS COMMISSION. *Transitional Justice in Kenya: A Toolkit For Training and Engagement*. 68.

⁹³ OGUNWALE, G., & MOJEED, M. (2005, March 8) "Nothing Stops Government From Releasing Report On Rights Abuse –Oputa". *the Punch Newspaper*, 1-2.

participation in democratic politics.⁹⁴ The Commission was ready to publish the report for implementation, but as previously mentioned, the Olusegun Obasanjo's government quickly suppressed its publication.⁹⁵

5.3.1 Views of the Nigerian media

It would appear that the Commission enjoyed wide media coverage and publicity at the beginning.⁹⁶ In an exclusive interview with Tell Magazine dated March 19, 2007, the Chairman was asked the much-awaited question: 'After working so hard on the Oputa Panel, would you say the report has been properly implemented'? He affirmed:

Every government has the right to decide whether to publish [the report including findings and recommendations] or not. In this case it was supposed to be a panel held in an office, but the government decided to make it public so that Nigerians would know what was happening. We carried the people along with us, and everybody followed the happenings on TV and radio.⁹⁷

Extending the idea, Ikhariale (2008) noted:

What happened during the hearings of the Commission was a lesson to all humanity. Yes, it was a huge entertainment for a people previously starved of fun for so many years. There were jeers, there were boos; and there were emotions as there were sophistries on free display. Never, since the days of *Alawadakerikeri* itinerant theatre, did ordinary Nigerians witness such a mammoth circus for free.⁹⁸

Ikhariale also posited that in the end all of the good, the bad, and the ugly lurking in the cloakrooms of military leaders were brought into the open for public scrutiny. Nigerians became aware of the horrible and disgusting foibles of their

⁹⁴ Ibid.70.

⁹⁵ ODUNUGA, Y. (2002, OCTOBER 17) "Why We Haven't Implemented Report-Govt". *the Punch Newspaper*, 1, 9.

⁹⁶ *Panorama, Chukwudifu Oputa (2007, March 19) Tell Magazine, 10.*

⁹⁷ *Panorama, Chukwudifu Oputa (2007, March 19), Tell Magazine, 10.*

⁹⁸ Ikhariale, M. *the Oputa Reports: An Unfinished Job*. Online http://www.Nigerdeltacongress.com/Oarticles/Oputa_Reports.Htm. 2

leaders. Who can forget the shame that former General Oladipo Diya and others openly heaped upon themselves in the vain hope to use the Commission to whitewash their tears and blood-soaked uniforms, as facilitated by the lowly ranked, Major El-Mustapha?⁹⁹ It was also scintillating because Nigerians wanted to see the faces of those who terrorised Nigerian citizens without remorse. It was also heightened by the fact that those accused of plotting coups¹⁰⁰ were present to tell Nigerians about those who implicated them as well as those that contributed to the annulment of the 1993 election. The Chairman of the Commission in an interview revealed some of the findings and recommendations contained in the report:

The annulment of June 12 was not the only allegation stacked against General Ibrahim Babangida. He is believed to have institutionalized corruption in the country during his eight-year rule. Babangida allegedly settled his political associates with money and positions through which some of them siphoned government funds to private pockets. The commission indicted him for the murder of Dele Giwa in October 1986. Even when the panel provided him [with] a platform to clear his name of all the allegations against him brought to the panel, he refused to attend the hearing despite the summons. A lot of Nigerians still remember those events vividly and hold him with suspicion.¹⁰¹

General Ibrahim Babangida refused to appear before the Oputa Commission and cited the following reasons, “I went to court to stop the implementation of the Oputa Report because the death of Dele Giwa over which I was summoned had been politicized”.¹⁰² If this is the main reason why Babangida did not face the Commission to clear his name, one can argue that his reason was an excuse. This is because Odusete (2014) had observed that at the time it had also become visible to all Nigerians that the Babangida administration was

⁹⁹ Ibid.

¹⁰⁰ *Tell Magazine* (2006, August 28), 21. See OLADIPO, D. (1999, October 25) “in the dock”, *News Watch Magazine*, Vol.30, No.16, 8-11.

¹⁰¹ OJEWALE, O. (2005, September 5) “Hunting For the Heir Apparent”. *Tell Magazine*, 20-21.

¹⁰² *This Day Newspaper* (2002, June 13) “Why I Am in Court–IBB”, 1-2.

massively corrupt.¹⁰³ General Babangida was economical with the truth. Correlatively, Masika observed that the dubious political will for commitment to the process, severely undermined the perceived legitimacy and overall effectiveness of the TJRC¹⁰⁴.

This was why Chief Fawehinmi Gani argued that Babangida and his co-accusers must present themselves before the Commission, as they could not be adequately represented by lawyers.¹⁰⁵ He also added that, by refusing to honour the summons, Babangida had committed contempt.¹⁰⁶

The Chairman of the Commission stated that the three former heads of state were indicted for various offenses brought against them.¹⁰⁷ They recommended to the federal government that all the former heads of state that failed to honour their summons to surrender their rights to govern Nigeria and Nigerians at any other time in the future.¹⁰⁸ In the second chapter it was asserted by Babawale (2006) said that the politics of ethnicity, region and religion continued as evident in the frantic search for a democratic alternative¹⁰⁹. This was entirely the environment through which the former was left to be judged by time. Chukwudifu Oputa in an interview with TELL Magazine dated September 5, 2005, asserts:

The role of President Babangida in the issue (of June 12 annulment) is like the role of Pontius Pilate in the Bible....So, people who wanted the election annulled, people in the military, people in the business world, politicians, all of them, were instigated by these faceless group of people whose only motive was vengeance against the symbol of the 1983 betrayal

¹⁰³ Ibid.70.

¹⁰⁴ SUTO, J. M. 2014. *Reconciliation in Divided Societies: A Case Study of the Kenyan Truth, Justice and Reconciliation Commission. A Research Project Submitted in Partial Fulfilment For the Requirement of the Degree of Master of Arts in International Studies*. University of Nairobi. Kenya, 17.

¹⁰⁵ *Tell Magazine* (2006, August 28)21.

¹⁰⁶ Ibid.

¹⁰⁷ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*.

¹⁰⁸ *Tell Magazine* (2006, August 28), 21,

¹⁰⁹ Op.Cit. 82.

of the late Chief Obafemi Awolowo. So, Babangida, in his own situation, found himself in the position of the biblical Pontius Pilate.¹¹⁰

The above statement goes to show that General Babangida was simply used as a tool to annul the 1993 Elections because of the powers of hegemony and ethnic politics.¹¹¹ Previously in chapter one, matters pertaining ethnic politics were rooted in the works of Ikime (ed.) (2012),¹¹² Falola et al. (1989),¹¹³ Crowder, (1966),¹¹⁴ and Falola et al. (1991),¹¹⁵ Akpofure and Crowder (1966),¹¹⁶ Perham (1960),¹¹⁷ and Lugard (1922).¹¹⁸

The assessment of the Oputa Commission by the Church was also commendable. According to This Day Newspaper dated September 15, 2002, with the headline 'Catholic Bishops to Obasanjo Publish Oputa Report Now,' after the Bishops Conference in Nigeria, President Olusegun Obasanjo was mandated to publish and implement the report of the Oputa Commission that had been submitted to his administration.¹¹⁹

What does this imply or say about the Oputa Commission? It implied that the Commission's report was accepted by all Nigerians and seen to be the solution to the myriad of problems confronting the nation. Thus, Maiska (2004) qualified this by stating that post-conflict reconciliation can therefore be seen as an attempt by individuals and local communities, supported by the international community, to put the past behind them and bring erstwhile enemies or opponents together

¹¹⁰ Tell Magazine "Cover Story" (September 5, 2005), 22.

¹¹¹ According To the Chairman of the Oputa Commission, the Role of President Babangida in the Issue of June 12 1993 Elections Is Like the Role of Pontius Pilate in the Bible. ...So, People Who Wanted the Election Annulled, People in the Military, People in the Business World, Politicians, All of Them, Were Instigated By These Faceless Group of People Whose Only Motive Was Vengeance Against the Symbol of the 1983 Betrayal of the Late Obafemi Awolowo. See details in Tell Magazine, September 2005, 22.

¹¹² Ibid.

¹¹³ Ibid.

¹¹⁴ Ibid.

¹¹⁵ Ibid.

¹¹⁶ Ibid.

¹¹⁷ Ibid.

¹¹⁸ Ibid.

¹¹⁹ This Day Newspaper (2002, September 15) "Catholic Bishops To Obasanjo: Publish Oputa Report Now," 1-2.

in a way that would heal the wounds resulting from long years of war, atrocities and impunity¹²⁰.

Also, This Day Newspaper dated November 10, 2004, reported that Reverend Father Hassan Matthew Kukah, who was a member of the Oputa Commission, asked the government to release the Commission's report to prove its sincerity in correcting the wrongs in the country.¹²¹ Added to the clarion call was the voice of Father George Ehusani, who pointed out in an interview with the Sunday Punch Newspaper dated February 13, 2005, that the Oputa Public Sitting was major national dialogue that had brought some recommendations. If we take the Panel report seriously, we do not need to set up more dialogue, because either we have a full sovereign national conference or we stay with this kind of report and look at what it is saying.¹²²

The effect of these calls began to heat the Nigerian polity to the extent that there were growing agitation for regional government,¹²³ national conference,¹²⁴ constitution review conference¹²⁵ and opposition national conference (PRONACO) by Chief Anthony Enahoro and civil society groups¹²⁶ so that the voice of Nigerians would matter.

¹²⁰ SUTO, J.M (October 2014) *Reconciliation in Divided Societies: A Case Study of the Kenyan Truth, Justice and Reconciliation Commission. A Research Project Submitted in Partial Fulfilment For the Requirement of the degree of Master of Arts in International Studies*. University of Nairobi. Kenya, 12.

¹²¹ *This Day Newspaper* (2004, November 2004) "Release Oputa Report – Reverend Father Hassan Matthew Kukah". Also See *the Punch* (2005, January 2) "Re-Open Deaths of Mko Abiola, Kudirat, Dele Giwa and Others".

¹²² *the Sunday Punch* (2005, February 13) "With Oputa Report, No Need For National Dialogue – Father George Ehusani".

¹²³ AKANBI, F. (2002, November 3) "We Must Return To Regional". *Sunday Punch*, 15. Also See NNAMANI, C. (2006, September 18) "Regionalism...Challenge of National Integration". *Tell Magazine*, 69-77.

¹²⁴ *the Punch Editorial* (2002, November 4) "National Conference: A Clarion Call". *the Punch Newspaper*, Vol.17, No.18, 1-2. Also See the Views of General Yakubu Gowon, *the Punch Newspaper* (2002, November 1) "We Need To Discuss Nigeria's Future," 34-35. See details in AKANMODE, V. (2002, November 2) "National Conference Back On the Front Burner," *Saturday Punch Newspaper*, 13, 19; Momoh, T. *Sunday Punch Newspaper* (2002, October 20) "To Save Nigeria, Let's Talk," 19-20.

¹²⁵ AVWODE, A. (2002, October 27) "We Must Review 1999 Constitution". *Sunday Punch Newspaper*, 20.

¹²⁶ EZEOKE, J. (2006, June 19) "Pronaco's Prolonged Labour". *Tell Magazine*, 36. Also See AKINTUNDE, K. (2005, MAY 16) "Recruiting For Parallel Conference". *Tell Magazine*, 27-28.

In the same vein, some Nigerians who petitioned for the Human Rights Investigation Commission (HRVIC), popularly known as the Oputa Panel, over human rights violations have blamed the present spate of political violence in the country on the non-implementation of the Oputa Report.¹²⁷ The argument here is that Nigerians eagerly awaited the release and implementation of the report to no avail. Thus, there was renewed agitation for secession and hostility¹²⁸ much more so than in the period before the inauguration of the Oputa Commission.¹²⁹

This development prompted eminent persons in the country to approach the government for a national conference¹³⁰ and a review of the Nigerian Constitution for peace to reign.¹³¹ In light of the previous developments, it was evident that the media not only played an active role, but also closely followed the proceedings and the work of the Oputa Commission that was clearly in the interests of the Nigerian masses and the media supported the project.

President Obasanjo was partly responsible for the non-implementation of the report. In the Vanguard Newspaper dated August 30, 2004, with the headline 'Oputa Panel: Matters Arising.' The editor wrote: Did President Obasanjo and his administration set-up the Human Rights Violation Investigation Commission (HRVIC) determined not to implement the reports, ¹³²or could they not help themselves? This is the question many meaningful Nigerians were asking. Nigerians who gave their time and efforts to the success of the Commission must have been worried that the President kept quiet and allowed the Oputa Panel report to gather dust in the archives.¹³³

¹²⁷ This Day Newspaper (2003, March 5) "Disregard of Oputa Panel Report , Cause of Political Violence".

¹²⁸ OMOFOYE, T. (2000, May 5) "Ife, Modakeke Boil Again, 25 Feared Killed". *the Punch Newspaper*, Vol. 17, No.17901, 1-2.

¹²⁹ AKANBI, F. (2002, NOVEMBER 3) *Sunday Interview*, "Beko Ransome Kuti, We Must Return To Regional". *the Sunday Punch*, 14-15.

¹³⁰ YAKUBU, S., OWETE, F., & OYEBODE, O. (2002, November 2) "National Conference: Gowon's Stancedivides Arewa". *the Saturday Punch*, 4. Also See ADEYEMO, W. (2004, November 29) "Special Report, Emeka Anyaoku Calls For Pragmatic Approach To Internal Issues: in Search of A New Nigeria". *Tell Magazine*, 22-23.

¹³¹ NNAMANI, C. (2006, September 18) *Discourse*, "Regionalism ...Challenge of National Integration," *Tell Magazine*, 69-77.

¹³² *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations.*

¹³³ *Vanguard Newspaper (2004, August 30) "Oputa Panel: Matters Arising,"*1-2.

The views of General Mohammad Buhari (rtd) were also informative. In the Vanguard Newspaper dated, with the headline 'I Won't Appear before the Oputa Panel – Buhari.' The former Head of State, Major-General Mohammad Buhari (rtd) declared on Friday that he would not appear before the Oputa Commission unless the law establishing it was reviewed.¹³⁴

Arguing for the release and implementation of the report, Justice Oputa posited in an interview with Punch Newspaper dated March 8, 2005, with the headline 'Nothing Stops Government from Releasing Report on Rights Abuse', that:

Many people did not understand the ruling of the court in respect of the committee's report. There was a court case, but I don't think our people took the trouble to know what the court decided. The court did not say that the report should not be published. It said that the recommendations against certain people should not be implemented. The report of the commission is now in the archives and anybody who wants to see it can go and make photocopy of it.¹³⁵

If the argument rests on the legal instrument and the court ruling that a part of the recommendations should not be implemented, the question is: what part of the report should be implemented? This had been a much-awaited answer from the Nigerian government and the court-cum-former Generals. In The Punch Newspaper dated October 17, 2002, with the headline 'Why We Haven't Implemented Government Report':

The Federal Government on Wednesday in Abuja said it deferred the implementation of the White Paper on the Human Rights Investigation and Violations Commission because of court cases against the release of the report. The decision, according to the Federal Government was taken, for the second time, on the advice of the Ministry of Justice and Attorney General of the Federation, Mr Kanu Agabi. So, this deferment has nothing to

¹³⁴ Vanguard Newspaper (2001, August 12) "Iwon't Appear Before the Oputa Panel – Buhari," 1-2.

¹³⁵ OGUNWALE G., & MOJEED, M. (2005, March 8) "Nothing Stops Government From Releasing Report On Rights Abuse". the Punch Newspaper, 1-2.

do with government's readiness to implement the recommendation. It is only that we are to follow due process and respect rule of law.¹³⁶

Relying on the argument of Olusegun Obasanjo's government, time had proven that they were hiding under cover of the court injunction;¹³⁷ the real argument was that the government was not ready to implement the findings and recommendations of the Commission. However, just as the Chairman of the Commission hinted, "Every government has a right to decide whether to publish or not".¹³⁸

5.3.2 Comments of individuals

Many blamed the court and the government of Olusegun Obasanjo for failing to implement the Oputa Report in light of the foregoing comments of individuals and the position of government. These are pressing issues in the analysis of the lessons of the Oputa Commission in Nigeria.

The views of Professors Babajide Tunde and Ndubuisi Francis provided interesting insights regarding the Oputa Commission. While Babajide Tunde noted that the bulk of the Commission's work rested at the President's table, who established the Commission,¹³⁹ Ndubuisi contended that the government cannot implement the report on the basis of the fact that friends of government were indicted in the report, and the penalty of losing their prestige and honour was at stake.¹⁴⁰ Similarly, Dr. Mba Christian pointed out that the government of Olusegun Obasanjo should not be blamed because he knew that Nigeria's democracy would be threatened if the Oputa Report were ever to be implemented. After all, it was the same military dictators that handed power to him.¹⁴¹ Finally, Professor

¹³⁶ ODUNUGA, Y. (2002, October 17) "Why We Haven't Implemented Report- Govt". *the Punch Newspaper*, 1, 9.

¹³⁷ See *Tell Magazine* (2006, August 28), 21; *the Punch Newspaper*, (2004, December 12) "Kukah Tackles Fg On Oputa Report". Also See *Guardian Newspaper Editorial* (2004, December 19) "Oputa Report: Matters Arising".

¹³⁸ Chukwudifu Oputa, "Panorama". *Tell Magazine* (2007, March 19), 10.

¹³⁹ Oral Interview With Professor Tundebabajide, 60+, Lecturer, University of Lagos, Nigeria, 2/9/2017.

¹⁴⁰ Oral Interview With Professor Ndubuisi Francis, 50+, Vice Chancellor, Christopher University Mowe, Ogun State, Nigeria, 5/9/2017.

¹⁴¹ Oral Interview With Dr Mba Christian 50+, Lecturer, Christopher University, Mowe, Ogun

Adeleke Ademola asserted that President Olusegun Obasanjo used the Oputa Commission as a smokescreen, so that European powers would re-admit Nigeria into the comity of nations.¹⁴²

Yoruba leader Ayo Adebajo also provided a significant view. He posited that the Yoruba do not want monetary compensation, as no amount of money can adequately compensate for their losses, but they wished for a peaceful meeting to solve all contentious issues in the polity so that such atrocities will not happen to any ethnic group whatsoever in the future.¹⁴³ Others underscored the need for the report to be translated and published in different languages with or without the consent of government, to enable Nigerians to digest the report and possibly pass judgment.¹⁴⁴ The views of some Nigerians indicated that the Oputa Commission was a step in the right direction. Nobody has indicted the Commission for incompetence or shoddy work and this was another lesson for Nigerians. However, it was important to learn from Kenya's transition since the TJRC established that victims had various ways of dealing with trauma and the suffering they had encountered. Some were willing to forgive due to their religious beliefs, the lapse of time since the violations took place, helplessness, and the desire to move on with their lives. Some victims showed sympathy for the perpetrators, acknowledging that they too were victims of a bad system. This calls to question whether any reconciliation had been realized in these cases.¹⁴⁵

The fact that the Oputa Commission indicted three former heads of state, perceived as the untouchables in Nigerian society, was a plus in the work of the Commission. In some circles, these authoritarian actors were said to possess impunity that could not bring them to justice by any individual or court of law. These were some of the early misgivings of the public on the efficacy of the Oputa Commission to achieve justice and rule of law for victims of human rights violations in Nigeria. These are some of the main issues in this chapter; they are

State, Nigeria, 5/9/2017.

¹⁴² *Oral Interview With Professor Adeleke Ademola 60+, Dean, Students Affairs, University of Lagos, Nigeria, 2/9/2017.*

¹⁴³ *Oral Interview With Ayo Adebajo 70+, Politician, Lagos, Nigeria. 10/9/201.*

¹⁴⁴ *Oral Interviews With Esedo Fred, 60+, Teacher, Becky Osazuwa, 50+, Politician, Hilda Momodu, Woman Leader, 80+, Lagos, Nigeria. 13/9/2017.*

¹⁴⁵ *Ibid.*, 266.

not only informative but also revealing in the sense that they offer understanding of the lessons of the Oputa Commission for Nigerians.

5.3.3 Views of scholars in published works

Perhaps published articles can offer insights into the work of the Commission and why implementation was difficult or failed.¹⁴⁶ Guaker (2009), in her informative study of “Nigerian Truth Commission and why it Failed”, underscored the Oputa Commission was able to fulfil the main objectives despite the fact that it was under-funded. Though hampered by financial constraints it could only attend to 250 cases out of 10,000 petitions.¹⁴⁷

The author added that the Oputa Commission could have done better were its legal powers not withdrawn¹⁴⁸ coupled with the Supreme Court pronouncement. Guaker affirmed that the Nigerian military was an incredibly powerful force on the political scene in the country.¹⁴⁹ Furthermore, the author posited that the inability of the Commission to set up important departments and units that would have facilitated its work hindered its operations from achieving total success. More importantly, from her perspective, the Oputa Commission lacked international funding from countries and donor agencies that would have improved its financial capacity.¹⁵⁰

Records indicate that the Commission received a generous donation from the Ford Foundation. In Guaker’s opinion “a truth commission with generous resources is more likely to achieve the objectives stated in its mandate”.¹⁵¹ Our take on Guaker’s argument was that the Oputa Commission failed because it was hampered by financial constraints and legal crisis. Thus, it was not able to attend

¹⁴⁶ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed* (Master's Thesis, the University of Bergen). Also See ADEYEMO, D.D. 2013, *Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt? A Research Paper*, Op.Cit.

¹⁴⁷ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen.

¹⁴⁸ Ibid.

¹⁴⁹ Ibid.

¹⁵⁰ Ibid. Also See *Synoptic Overview of Human Rights Violation Investigation Commission Report*, Op.Cit.

¹⁵¹ Guaker, E. Op.Cit.1-48.

to most of the high-profile cases brought before it and problems of staffing, interpreters and translators.¹⁵²

The work of Adeyemo (2013) was also revealing.¹⁵³ Adeyemo focused on the main reasons why the Commission failed or otherwise. Some points made by Guaker need not be rehearsed because they were sufficiently noted. However, the author pointed out that the HRVIC experienced both challenges and successes. The Commission had limited resources to carry out independent investigations and received limited international support.¹⁵⁴ As previously mentioned, past military heads of state and members of the military ruling class failed to appear before the Commission. Besides, the establishment of the Commission was even challenged as unconstitutional¹⁵⁵ by some past military leaders.¹⁵⁶

According to Adeyemo (2013), the Commission did not achieve as much as what was expected of it, and this stemmed from the basis of its operation. The legality of the Commission had not been properly settled and its mandate was too narrow to effectively cover areas of human rights violations by past military regimes.¹⁵⁷ Writing in the same vein, the author contended that, in the midst of the challenges, the Commission concluded its work and submitted its report to the president in May 2002, which was never officially released. Initially the president inaugurated an implementation committee upon receiving the report in June 2002 to begin the process of implementation, but this was later dismissed on the grounds that the legality of the Commission had been challenged in the courts.¹⁵⁸

¹⁵² Op.Cit.34.

¹⁵³ ADEYEMO, D.D., 2013. *Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt?* (Doctoral Dissertation, University of Western Cape), Op.Cit.

¹⁵⁴ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria. the International Journal of Transitional Justice*, 1(2),268-286, Cited in ADEYEMO, D.D. 2013, *Transitional Justice After the Military Regimes*, Op.Cit. Specifically, 14.

¹⁵⁵ *the Punch Newspaper* (2005, April 5) "Conference Quick Take, Yadudu and Illegality,"8; Details As Cited in ADEYEMO, D.D. (2013, October 28), Op.Cit. *the Supreme Court [Sc] Is the Apex Court in the Country With the Final Decision On Any Matter*. FAWEHINMI V. BABANGIDA (2003) NWL RPT (808) 604. *the Sc Relied On the Provisions of Tribunals of Inquiry Act Cap 447 and 1999 Constitution*, 27.

¹⁵⁶ ADEYEMO, W. (2006, August 28) Cover Story, "Giwa: Allegedly Killed By Babangida's Security Goons". *Tell Magazine*, 21.

¹⁵⁷ ADEYEMO, D.D., 2013. *Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt?* (Doctoral Dissertation, University of Western Cape). Op.Cit.

¹⁵⁸ *Brigadier Kunletogun (Rtd.) V. Justice Chukwudifuoputa (Rtd.) and 3 Ors* (2001) 16 NWL RPT (740) 577. Originally Cited in ADEYEMO, D.D. (2013, October 28). *Transitional*

The Supreme Court (SC) overruled the Commission's recommendations because the appropriate authority did not establish the Commission.¹⁵⁹ Therefore, there had been contention as to the true effect of the decision of the SC, but the decision of the federal government to not release or implement the report based on this decision was quite pretentious. The report was submitted in 2002 while the decision of the SC was in 2003. The decision from the Supreme Court did not restrain the government from implementing the recommendations.¹⁶⁰ The report was, however, unofficially published by civil society. Therefore, its content was widely known today, despite the decision of the SC against the legality of the Commission.¹⁶¹

The work of Ikhariale (2008) was also germane in our attempt to arrive at the challenges and current state of knowledge on the Oputa Commission and why it failed. The author argued without equivocation that "the Oputa Commission was neither equipped to completely find the truth about what actually took place nor reconcile the dramatic personae or anybody. But contrary to the general scepticism that greeted its establishment, the Commission... has, for all intents and purposes proved to be of some limited success".¹⁶²

Corroborating the views of Adeyemi (2013) and Guaker (2009), Ikhariale (2008) added that:

Firstly, the instruments setting it up were less than clear, a situation that created considerable doubt in the minds of the citizenry who had on many previous occasions been deceived by similar quasi-judicial bodies

Justice After the Military Regimes in Nigeria, Op.Cit.27.

¹⁵⁹ Quoted in FAWEHINMI V. BABANGIDA (2003) *Nigerian Weekly Law Report* (808) 604. the Supreme Court Relied On the Provisions of Tribunals of Inquiry Act Cap 447 and 1999 Constitution. Quoted in Adeyemi, D.D. (2013, October 28). *Transitional Justice After the Military Regimes in*

Nigeria. Details in AKHIHIERO, 2001/2002. *the Constitutionality and Powers of the Human Rights Violation Investigations Commission (Oputa Panel)*, Vol.7, No.1, *University of Benin Law Journal*, 116-135.

¹⁶⁰ ADEYEMI, D.D. (2013, October 28). *Transitional Justice After the Military Regimes in Nigeria: A Failed Attempt?* LLM Thesis. University of Western Cape. South Africa, 1-103.

¹⁶¹ *Nigeria Muse* Available At <http://Nigerianmuse.Com/NigeriaWatch/Oputa/> (Accessed 2 September 2017). Also See FALANA, F. "the Oputa Panel Report. *Guardian Newspaper* 8 January 2005. Available At <http://www.Dawodu.Com/Falana2.htm> (Accessed 2 September 2017). Details in ADEYEMI, D.D. (2013, October 28). *Transitional Justice*, Op.Cit.

¹⁶² IKHARIALE, M. 2008. *the Oputa Reports: An Unfinished Job*. Online [http://www.Nigerdeltacongress.Com/Oarticles/Oputa Reports.Htm](http://www.Nigerdeltacongress.Com/Oarticles/Oputa%20Reports.Htm). 1-4.

whose printed reports are now materials only good enough for the ubiquitous guguru street hawkers. Secondly, the Commission, unlike the South African original, was inadequately equipped and characteristically underfunded and understaffed.¹⁶³ The above statement adequately proved that the Oputa Commission was beset with some challenges since the government refused to address the myriad of problems.¹⁶⁴

“The anxiety of the public for the release of the report containing the findings and recommendations of the Commission is therefore understandable”.¹⁶⁵ Since the Commission formally submitted the Reports, it was the government’s responsibility to make use of its contents for the public, whose benefit it was supposedly created for, to accept and adopt the ‘new lease of life’ as prescribed by the Reports.¹⁶⁶ Thus, failure to do so as Ikhariale (2008) underscored would mean that we would have wasted an opportunity to make amends, change our evil ways and heal our past as a people.¹⁶⁷ On the issue of compensation, Ikhariale offered profound insight on its indispensability. He emphasizes that:

Of all the issues that must come up in the aftermath of the Reports is that of compensation. Signs that it [compensation] would be contentious were given by the honourable Chairman when he hinted that the Panel was not particular about the form of compensation rendered to the victims as long as there is a semblance of it. President Obasanjo seems to have prematurely bought this argument, as he was also quoted as saying that there would be no monetary compensation stemming from the Oputa Report. I think there is a fundamental misconception here. Compensation in this context is not a "reward" or a "prize" for going to jail and for enduring

¹⁶³ Ibid.

¹⁶⁴ *Details in Oputa Commission Synoptic Overview of Human Rights Violation Investigation Commission Report*, Op.Cit.

¹⁶⁵ IKHARIALE, M. 2008. *the Oputa Reports: An Unfinished Job*. Online <http://www.Nigerdeltacongress.Com/Oarticles/Oputa Reports.htm>. 1-4.

¹⁶⁶ Ibid.

¹⁶⁷ Ibid.

or surviving torture and humiliation, but a moral gesture of our appreciation of the humanity of the victims that were denied in the process.¹⁶⁸

His narrative coincided with that of the TJRC: reparation was key to reconciliation. The commission posited that reparation conditions demanded from perpetrators were confession and apologies, justice, compensation, and the demand for a meeting with the alleged perpetrators in order to understand why they acted the way they did¹⁶⁹. Ikhariale also raised other contentious questions. Firstly, what will happen to those who unlawfully violated the rights of fellow citizens? Secondly, what will happen to those who suffered from their acts of brutality? Thirdly, what is the obligation of the government to the victims? And finally, would there be amnesty for those whose conduct fell below the expectations of the Panel? The answers to these questions must be found inside the voluminous Reports.¹⁷⁰

The author concludes that it is not right, as the Panel Chairman and the President have insinuated that compensation for victims of human rights violations will not include monetary gestures.... He must therefore not forget that many others left similar jailhouses for their ruined businesses, shattered homes and irretrievably diminished personalities. Our submission was that there must be real compensation because the maxim of the law *ubi uius ubi remedium* (for every wrong, the law provides a remedy) was a hallowed principle of our constitutional process.¹⁷¹.

Contrary to Kenya's transition, some strides had been taken towards that cause, though not significant. Masika for example observes that to date, there had not been comprehensive reparations programmed in Kenya for gross human rights violations. Only some limited forms of assistance to victims had been afforded, and this has not been accompanied by any measure of accountability. The Kenyan government had made some minimal payments to a minority of all people displaced during the post-election violence of KSh. 10,000 and KSh. 25,000

¹⁶⁸ Ibid. 3.

¹⁶⁹ Ibid.

¹⁷⁰ Ibid.

¹⁷¹ Ibid.

(approximately US \$117 and US \$293 respectively). These payments were to provide basic needs and the reconstruction of homes. They had not been framed (or conceived of) in terms of reparations per se; rather, they have functioned as mere emergency assistance, and were far from comprehensive.¹⁷²

On the issue of apology, Ikhariale suggested that after the public apology must have been given, ostensibly in the official Gazette and in the media, a written official certificate confirming the text and spirit of that apology should be issued through the office of the Commission to all concerned. This suggestion was more than a mere exercise in bureaucracy. It was also about setting precedents in human rights protection and respect.¹⁷³

The media reports, individual comments, and published articles were comprehensive on the Oputa Commission. This demonstrated the wide range of publicity and attention the Commission received during the period under study. Perhaps this was due to the fact that the Commission was perceived as a catalyst for the resolution of socio-political problems facing the country.¹⁷⁴ The general public also saw the Commission as a timely intervention after many years of prolonged military rule,¹⁷⁵ which was characterized by gross violation of human rights¹⁷⁶ and endless transition politics.¹⁷⁷

Therefore, having examined the views and perspectives of the media, Nigerian people and published articles, there was a unanimous agreement that the Oputa Commission was fraught with numerous challenges. These included the problems of funding,¹⁷⁸ staffing, constitutionality, judicial tension, and military

¹⁷² Ibid.

¹⁷³ Ibid.

¹⁷⁴ NNOLI, O., 1978. *Ethnic Politics in Nigeria*. Forth Dimension: Enugu. See Also JOSEPH, R. 1999. *Democracy and Prebendal Politics in Nigeria*, Op.Cit.43-68.

¹⁷⁵ ADENIYI, O., 2005. *the Last 100 Days of Abacha: Political Drama in Nigeria Under One of Africa's Most Corrupt and Brutal Military Dictatorships*. Book House Company. Op.Cit.

¹⁷⁶ MEREDITH, M. 2011. *the State of Africa: A History of the Continent*, Op.Cit. 574-580. Also See Annual Report 1997. *A Civil Liberties Organisation Report On the State of Human Rights in Nigeria*; Annual Report 1998. *A Civil Liberties Organisation Report On the State of Human Rights in Nigeria*; Dowden, R. 2009. *Africa: Altered States, Ordinary Miracles*. Portobello Books Ltd. 470-478.

¹⁷⁷ Details in ONUOHA, B., & FADAKINTE, M.M., ED. 2002. *Transition Politics in Nigeria, 1970-1999*. Malt House Press Ltd: Ikeja.

¹⁷⁸ *This Day Newspaper* (2002, January 10) "Nigeria's Truth Commission": Too Poor To Finish Work,"1-2.

overlord. These problems have conjoined to making the Oputa Commission ineffective in its work. Scholars had agreed that the mandate of the Commission was elaborate for the task, the same as the terms of reference considering the scope of the Commission's investigation. This was further expressed by the Chairman:

“The Commission was of the view that there was need to go beyond the Mandate, in search of pathways along which the project of nation building must proceed. This is more so, because the Commission is uniquely the best opportunity that Nigerians have had in several years to forge an informed understanding of their country's past and to put in place the necessary foundational building blocks on which a new Nigerian nation would rest”.¹⁷⁹

There was the general thinking that the Obasanjo administration lacked the political will to implement the Commission's report, thus hiding under the Supreme Court injunction.¹⁸⁰

It was also speculated in some quarters that Nigerian democracy was not only fluid but too young to step on military dictators who have just left power in frustration but waiting in the wings to see whether the democratic government would make policy errors that would lead to their incursion into politics. The findings and recommendations of the Oputa Commission that caused the non-implementation of the Oputa Report by the Obasanjo administration will be discussed in the following section.¹⁸¹

5.4 Structure, findings and recommendations of the report¹⁸²

¹⁷⁹ Details in *Synoptic Overview of Human Rights Violation Investigation Commission Report*, Op.Cit.23.

¹⁸⁰ ODUNUGA, Y. (2002, October 17) “Why We Haven't Implemented Report –Govt”. *the Punch Newspaper*, 1, 9.

¹⁸¹ EHUSANI, G. (2005, February 13) “With Oputa Report, No Need For National Dialogue”. *Sunday Punch Newspaper*. Also See OJEWALE, O. (2005, September 5) “Hunting For the Heir Apparent”. *Tell Magazine*, 21; AGBO, A., ORIMOLADE, A., BAKARE, I., & SALAMI, H. (2005, March 7) “President Has Had His Say...” 28.

¹⁸² *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit.

The military class was determined to scuttle the process since they perceived themselves as targets of the Oputa Commission. Consequently, less supportive governments had been known to reject the Commission's findings altogether and even refused to release the report, but an affirmative government will actively pursue the implementation of the commission's recommendations.¹⁸³ Guaker (2009) added that sometimes truth commissions can include recommendations for prosecutions in their report and sometimes their findings served as a preliminary foundation for further criminal investigation, but this depended on the political environment of the country.¹⁸⁴

5.4.1 Structure of the report

The Oputa Commission is structured in six volumes with a conclusion.¹⁸⁵

The first volume drew attention to the historical extent for understanding not only the development of constitutional provisions for human rights, but also the violation of those rights in the country. It provided a theoretical basis for understanding and appreciating the burden of our colonial legacy and its implications for and impact on human rights violation in the country.¹⁸⁶

The second volume examined at considerable length the implications of the internationalisation or universalization of the core moral imperatives and values of the evolving international law and practice of human rights for Nigeria's municipal law generally and more specifically for its human rights domestic law and practice.

The third volume attempted to capture this neglected aspect of the country's history and politics, summarising the findings of the commissioned researchers.

The fourth volume dealt with the public hearings of the Commission, while the fifth volume focused on reparation, restitution and compensation. The sixth

¹⁸³ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*, Master's Thesis, the University of Bergen, Op.Cit. 20.

¹⁸⁴ Ibid.

¹⁸⁵ *Oputa Commission Synoptic Overview of Human Rights Violation Investigation Commission Report*, Op.Cit.

¹⁸⁶ Ibid.

volume presents the Commission's findings and recommendations.¹⁸⁷

The Oputa Commission investigated a wide range of human rights violation committed during the military regimes from 1966 to 1999. The Commission concluded that the issue was not simple or straightforward. It discovered from the evidence tendered by representatives of various interest groups and communities that there were accusations and counter-accusations targeting particular communities, institutions, or groups. On the whole, it was indisputably clear from the evidence that the citizens of Nigeria generally believed they have suffered badly at the hands of successive governments in the country since its independence, although this was more pronounced under military rule.¹⁸⁸ (24)

Specific issues investigated include: (1) murders, (2) abduction, (3) torture, (4) harassment and intimidation, (5) prolonged detention without trials, (6) employment related cases, and (7) attempted assassination.¹⁸⁹

Since the recommendations were wide-ranging and far-reaching, it was appropriate that critical points be highlighted in this chapter. At the same time, it was instructive to note that the public hearings and arguments surrounding its operations have been discussed in Chapter Four of this study. As the Chairman asked: Which option should Nigeria choose? The answer is clear from the Commission's mandate, its terms of reference and the President's address at the inauguration of the Commission which stipulate: "Forgiveness and Reconciliation. Reconciliation was the key word in the President's Address. Our quo warrant is the search for this reconciliation".¹⁹⁰ These were the rules that guided the Commission's work in the quest for justice for victims of human rights violations in Nigeria.

¹⁸⁷ Ibid.

¹⁸⁸ Ibid. 24.

¹⁸⁹ *Oputa Commission Synoptic Overview of Human Rights Violation Investigation Commission Report: Conclusion and Recommendations*. Also See GUAKER, E. "Qualitative Analysis of the Oputa Panel and the Factors Which Explain the Failure of the Commission". in GUAKER, E. 2009. *A Study of the Nigerian Truth Commission*, Op.Cit.11.

¹⁹⁰ *Oputa Commission Synoptic Overview of Human Rights Violation Investigation Commission Report*, Op.Cit. 8.

5.4.2 Findings of the report¹⁹¹

The Oputa Commission found a direct link between the military rule and gross human rights violation that left a stain in Nigerian history. Military rule marked the rapid descent of the country into anarchy and destruction.¹⁹² The report noted that military rule created an environment conducive to gross violation of human rights in two respects:

1. Firstly, military rule violated the human rights of Nigerians to live under constitutional or limited government.
2. Secondly, military rule militarized the country, creating in the process a climate of militarized fear and thirdly, the military turned their instruments of coercion on ordinary citizens.¹⁹³

The Commission also noted that military rule was a fundamental violation of the Nigerian Constitution. During the military regime, the leaders suspended relevant sections of the Constitution and replaced constitutional rule by decree. One of these degrees was the infamous Decree No. 2.¹⁹⁴

The findings also revealed that the State often refused to obey judgment of competent courts to the detriment of citizens' rights as a creditor in breach of Section 287 of the 1999 Constitution.¹⁹⁵

It equally discovered that the Nigerian Police Force suffers image problems and institutional challenges due to the following: (a) poor service conditions, (b) lack of working tools, (c) Poor training, (d) Low morale under the military, (f) Lack of internal discipline, and (g) Lack of control and monitoring of weapons among policemen and women.¹⁹⁶

¹⁹¹ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*.

¹⁹² Ibid.48.

¹⁹³ Ibid.

¹⁹⁴ Ibid.49. For Details of Military Decrees See OJIAKO, J.O. 1980. *Thirteen Years of Military Rule, 1966-79*; UWECHUE, R. 2004. *Reflections On the Nigerian Civil War*.

¹⁹⁵ Oputa Commission *Synoptic Overview of Human Rights Violation Investigation Commission Report*, Op.Cit. 49-50.

¹⁹⁶ Oputa Commission *Synoptic Overview of Human Rights Violation Investigation Commission Report*, Op.Cit. 54.

5.4.3 The case against General Mohammad Buhari

It was clear from the findings of the Commission that General Mohammad Buhari and the Director-General of the National Security Organization (NSO) were accountable for violating the rights of several Nigerians who were detained without trial, some of them include, Alhaji Shehu Shagari, Solomon Lar, Alhaji Rafindadi, and others. There was also evidence from AL haji Umar Dikko that he was “crated” by the Buhari regime for onward transmission to Nigeria. A lot of Nigerians would remember the diplomatic tension this incident created between Nigeria and Britain during the period. It would be recalled that some of the Nigerian security operatives who took part in the kidnapping of Umar Dikko were thereafter sentenced to various jail terms in Britain.

It was also discovered that both General Mohammed Buhari and members of his Supreme Military Ruling Council, along with the Attorney General, were indicted for the death of Kenneth Owoh and three others over allegations of drug involvement, without due trial by a competent court, thereby offending both rule of law and the African Charter of Peoples’ Rights. This demonstrated the level of impunity exhibited by the authoritarian regime in Nigeria. There was no gain in saying that the Buhari administration emasculated the masses, gagged the press, and suppressed their opponents and politicians.

Nigerians recalled with deep regret that the Buhari administration established Special Military Tribunals under Decree No. 3 of 1984, called the Recovery of Public Property Decree.¹⁹⁷ The Decree provided long prison terms for any person found guilty of abuse of office. It was this instrument that General Buhari exploited during his authoritarian regime to clamp down on freedom of expression and rule of law in the country. The Oputa Commission’s indictment of the regime was highly commendable in its own right.

¹⁹⁷ See FALOLA, T., MAHADI, A., UHOMOIBHI, M., & ANYANWU, U. 1991. *History of Nigeria, Vol.3, Nigeria in the 20th Century*. Longman Nigeria: Ikeja, 192.

5.4.4 The case against General Badamosi Babangida

The Oputa Commission recommended that the Dele Giwa case be re-opened for a thorough investigation and possible prosecution of perpetrators. This was a welcome development to the well-meaning Nigerians and patriots. It will be recalled that Dele Giwa, editor-in-chief of News watch, was killed by a letter bomb on Sunday, October 19, 1986, in his home at Ikeja, Lagos. Prior to his death, General Babangida's security chiefs had accused him of gun-running and subsequently invited him to their office in Ikoyi, Lagos where he met with the State Security Service that interrogated him. Dele Giwa, then invited his lawyer, the fiery Fawehinmi Gani, and pleaded with him to follow up on the case as it was clear that the government was after him.

A few days later he was killed by a letter bomb and Chief Fawehinmi Gani accused the government of his death. He particularly accused Colonial Halilu Akilu, then director of military intelligence and Lt. Col AK Togun, then deputy director of the State Security Service (SSS), as well as Babangida.¹⁹⁸ Fawehinmi Gani approached several courts for justice but was stalled by authoritarian regimes until the establishment of the Oputa Commission.

Fawehinmi Gani sought two reliefs: 1) that Akilu and Togun be prosecuted for the murder of Giwa, and 2) that the two principal suspects together with Babangida should pay N2billion compensation to Giwa's mother, wife, children, and other dependants and relatives of Giwa. News watch directors asked the Justice Chukwudifu Oputa-led Human Rights Investigation panel for "an objective and rewarding review" of the case. It was on the strength of this review that the Commission invited Babangida, Akilu, and Togun to answer the charges brought against them.¹⁹⁹ Unfortunately they rejected the invitation and proceeded to challenge the constitutionality of the Commission in court.

After a thorough investigation, The Oputa Commission indicted the three men. The Commission said in its report: "We recommend to the federal

¹⁹⁸ UGWU, E. (1999, August 16) *"in Search of Justice"*. *News Watch Magazine*, Vol.30, No.6, 34.

¹⁹⁹ Ibid.

government that all the former heads of state who did not honour the summons be considered to have surrendered their right to govern Nigeria and Nigerians at any time in the future”.²⁰⁰

The Oputa Commission also indicted General Babangida’s administration for squandering the oil windfall realized by the country during the Gulf War. He refused to defend this accusation. His negligence led to an economic disequilibrium and hyperinflation in the country. It also led to lock down of businesses and industries. A lot of Nigerians still remember those events vividly and hold Babangida with suspicion.²⁰¹ It was the anxiety created in the minds of Nigerians that led to the agitation for a commission of inquiry to investigate the gulf oil windfall in Nigeria. The distinguished economist Pius Okigbo chaired the Commission. To date the Okigbo Report has not been released, but it was available to the Central Bank of Nigeria and some universities across the country.

Similarly, it was equally found in the report that implementation of certain public policies, like the Structural Adjustment Programme (SAP) by the military regimes, contributed to human rights violation. The reaction of Nigerians to SAP led to what came to be known in Nigeria as the ‘SAP Riots’. These demonstrations took place within and outside university campuses and some students and workers lost their lives in the process. It will be recalled that SAP was a regulatory economic policy of the International Monetary Fund (IMF) and the World Bank, introduced to the Nigerian government as a means of economic recovery, self-reliance and self-sustained growth. SAP did not benefit the Nigerian economy; in fact, it had the opposite effect.

Various prominent people include the renowned Nigerian economists, Professor Toyo Eskor, Chief Ola shore, Managing Director of the First Bank, and Chief Ayagi of the defunct Continental Merchant Bank opposed the idea of a loan from the IMF and World Bank. Nigerian women even protested the loan and took their vocal opposition on the streets. At first it gladdened the hearts of Nigerians

²⁰⁰ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*. Also See ADEYEMO, W. (2006, August 28) *Cover Story, “Giwa: Allegedly Killed By Babangida’s Security Goons”*. *Tell Magazine*, 21. *Details in News Watch Magazine* (1987, October 26) *“Cover Story: Remembering Dele Giwa,”* 10-23.

²⁰¹ OJEWALE, O. (2005, September 5) *“Hunting For the Heir Apparent”*. *Tell Magazine*, 21-22.

that General Babangida's administration was becoming democratic in approach. Indeed, it was not long before the administration succumbed to the bidding of the IMF and World Bank executives by taking the loan.

Consequently, the loan sparked riots in every state in Nigeria. The effect was the total collapse of the Nigerian economy due to the conditions set forth by the IMF. The impact of this was unemployment, an increase in the price of goods and services, divorce, armed robbery and the emergence of scam men, popularly known as '419'. The era also marked the beginning of the export of Nigerian women as sex labour across Europe.²⁰² The fact that the Oputa Commission discovered that certain government policies were inimical to Nigeria's development was testimony to its good work.

5.4.5 The case against the late General Sanni Abacha²⁰³

The government of General Sanni Abacha was found to be singularly accountable for the most heinous human rights violations. These violations included the brutal murder of Pa Alfred Rewane in Lagos, perceived by the authoritarian regime of Abacha and his cronies as an opponent of government, Mrs Kudirat Abiola, Alhaja Suliat Adededeji, Admiral Olu Omotehinwa, Ken Saro-Wiwa and his kinsmen, and others. The regime was also found to be responsible for the serial bomb explosions masterminded by state security operatives, and general brigandage of the security services against citizens.

All these atrocities and repressive measures against the Nigerian citizens provoked international sanctions against Nigeria.²⁰⁴ This was significantly correlated to Akinyeye's (2003) examination of contemporary issues of international relations and the place of Nigeria in the wider world.²⁰⁵

²⁰² Details in TOYO, E. 2002. *Economics of Structural Adjustment: A Study of the Prelude To Globalisation*. First Academic Publishers: Lagos; AHMED, A. 1987. *the Structural Adjustment Programme: the Journey So Far*," *Economic and Financial Review*, Vol.25, No. 4, Central Bank of Nigeria.

²⁰³ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*.

²⁰⁴ Details Can Be Found in FAWOLE, A. *Nigeria's External Relations and Foreign Policy*, Op.Cit. 189-211. Also SeedIBIA, O. (2009, November 17) "Remembering Ken Saro-Wiwa". *the Vanguard Newspaper*, 19.

²⁰⁵ Op.Cit. See Footnote 177.

The evidence in the case against Abacha, as recommended in the report, was that the federal government re-open the case of the death of General Shehu Yar'Adua, who died in custody in prison in mysterious circumstances on June 4th, 1996. He was detained simultaneously with Chief Olusegun Obasanjo in a case of coup hoax by the Abacha regime. Major Al-Mustapha and Lt. Col Ibrahim Yakassai had since been accused and stood trial for the killing of Shehu Musa Yar'dua. They were charged with administering a stupefying and overpowering substance through lethal injection and thereby killing Shehu Musa Yar'dua in detention.²⁰⁶ Consequently, the evidence in this case was inconclusive and in the opinion of the Commission required further investigation.

5.4.6 The case against General Abdulsalami Abubakar

With respect to the death of Chief Moshood Abiola, the Commission found that there were still more questions than answers after the testimony of General Abdul salami's Chief Security Officer. It was therefore important for the State to re-open this case along with that of the late General Sanni Abacha in order to lay some misconceptions to rest.

This chapter was in support of the view of the media, which argued that the death of Abiola in detention had created a political quagmire. Nigerians became suspicious that those who did not want Abiola as president might have conspired to kill him.²⁰⁷ For this reason, it was recommended that the case be re-opened for further investigation.

5.4.7 The case and findings against the Nigerian Police Force

The Commission also indicted the Nigerian Police Force (NPF). Similar to military, the NPF were accused of human rights violation. While there were many innocent and hardworking policemen and policewomen, the NPF suffered a

²⁰⁶ See OLADIPO, D. (1999, October 25) *"in the dock"*. *News Watch Magazine*, 8-11.

²⁰⁷ Details in AIYETAN, D. (2006, August 28) *Cover Story "Abiola: Denied Electoral Victory By IBB, Died in Controversial Circumstances"*. *Tell Magazine*, 24.

serious image problem in the country. For example, many atrocities committed by the NPF were documented in the publications of the civil liberty organisation.²⁰⁸

From the evidence before us, the Commission is of the opinion that there is an urgent need to seriously overhaul most of the security agencies and also re-orientate their staff towards imbibing and respecting the human rights of Nigerians and the values of democracy.

5.4.8 The case and findings against public bureaucracy and human rights violation

The commission found from its content and tone of the petitions that concern was expressed about religious, ethnic, gender and regional biases in government appointments, promotions and retrenchment. For example, there were allegations to the effect that certain senior officials tended to effect changes in their ministries along ethnic or religious lines.... Thus, the Commission members held that these allegations are disturbing, and it is hoped that the setting up of the Federal Character Commission will deal with this issue.

5.4.9 Findings on national dialogue

- 1) "We believe that there is the need for Nigerians to have platforms from which to articulate their fears and grievances, beyond the present political party arrangements. These platforms need not be primarily national. The discussion can start from the words and local government councils to the states and then finally to the national level.... Their discussion could be summarized and finally tabled before the State assemblies, before they are forwarded to the National Assembly", the Commission advised.
- 2) "Since the idea of a Sovereign National Conference has become so chaotic and lacking in clarity, we believe that our alternative suggestion of a bottom-up, broad-based series of national seminars or palavers on our

²⁰⁸ Details Can Be Found in Annual Report 1997. A CLO, *Report On the State of Human Rights in Nigeria*; Annual Report 1998. A CLO *Report On the State of Human Rights in Nigeria*.

country's future political and constitutional structure, would not disrupt the current one'', the Commission reiterated.

5.4.10 Findings on resource generation and allocation

- 1) While the Commission members commend the Federal Government for the progress that has been made by the creation of the Niger-Delta Development Commission, they believed more could be done. For now, the Commission should be closely monitored in terms of project conception and execution, with the local communities playing a central role in the execution and evaluation of the projects.

5.5 Recommendations

The recommendations of the Oputa Commission cantered on key issues militating against Nigerian society. These were matters that have remained worrisome over time and discussed in the media as well as civil society groups. The fact that the Commission deliberated on these issues and offered solutions demonstrated the determination of the Commission to social engineering of the Nigerian State. Some issues include:

5.5.1 On the civil service²⁰⁹

- 1) They recommend that, 'the federal and state government, effect some fundamental changes to enable the Civil Service become responsible to the challenges of democratization'.²¹⁰

5.5.2 The issue of National dialogue/ constitution²¹¹

- (1) It is recommended that, 'the items that were to be discussed at the proposed palavers could include the following: human rights violations,

²⁰⁹ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*.

²¹⁰ Ibid. 59.

²¹¹ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*.

basis for representation, resource generation/control, infrastructure, taxation, participatory democracy, identity (religion, ethnic, communal), constitutional rights, policing, crime prevention, etc.)²¹²

(2) And that, the National Assembly ought, as a matter of top most urgency, harmonise, in collaboration with the State Legislatures, the findings of the various Constitution Review initiatives, to bring into existence an acceptable constitution.²¹³

(3) It was recommended therefore that the Report of the 1997 Kayode Eso Panel of Inquiry on the Judiciary should then be released immediately.²¹⁴

The Oputa Commission fulfilled its mandate and terms of reference creditably, in that it probed highbrow issues that had plagued the country for nearly half of a century. It was a credit to the Commission that other individuals, institutions or organizations did not manipulate the Commission's original mandate. The verifiable findings and recommendations attested to the fact that it was overwhelmingly diligent in the quest for truth and justice. Similarly, amidst the challenges of underfunding and lack of political will on the part of government, the Commission was able to unearth the case of Dele Giwa and the problems of 1993 Elections, demanding that General Babangida be held accountable for abuse. Justice was delayed but not denied. Consequently, Masika (2004) noted that the TJRC's reconciliation efforts in Kenya were as old as the country's independence back in 1963.

It further asserted that the commission was under no illusion that it could accomplish a task that had not been accomplished in almost half a century. This clearly (according to Masika) indicated that reconciliation was thus never really realized.²¹⁵ The findings and recommendations against the brutal regime of Abacha were also laudable.

Furthermore, the evidence surrounding the deaths of Shehu Musa

²¹² Ibid.63.

²¹³ Ibid. 91.

²¹⁴ Ibid.92.

²¹⁵ Ibid. 266.

Yar’dua, Kudirat Abiola and Pa Alfred Rewane, and others that were supposedly lost under the watch of authoritarian regimes were not only recovered but also legally reconstructed.

Major Al-Mustapha, Colonel Ibrahim Yakassai, and their cronies had legitimately faced the law and had been incarcerated for over 10 years since their heinous crimes. In the same vein the facts that the death of Chief MKO Abiola could be re-opened and Abubakar’s regime should be held accountable are progressive.

The Nigerian Police Force (NPF) was equally indicted as a brutal institution, with few exceptions. The testimonies of Nigerians found the police were regularly implicated in extortion, maiming, killing, and illegal detention of suspects. The fact that the armed forces were not spared shows the depths delved by the Oputa Commission to reconstruct a new Nigeria.

Additionally, the recommendations of the Commission for a national conference or national dialogue was impressive even without the release or implementation of the Commission report, the National Political Reforms Conference report, the Justice Eso’s report on the Judiciary, Pius Okigbo’s report on the Gulf War oil windfall, and neither the Ken Nnamani’s Constitution Review Committee report. The non-release and non-implementation of all these reports show that Nigeria was in a political dilemma, hoodwinked by the forces of hegemony, impunity and ethnic politics.

5.5.3 Human rights and civil/ moral education in schools²¹⁶

(1) The Commission recommended

“a teasing out of the results of the Commission’s work, including some of the discussions suggested above, and making them part and parcel of the curricula in schools. It also recommended an

²¹⁶ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*.

urgent return to civic/ moral education from Nursery to Primary, Secondary School and at tertiary level anchored on the principle of oneness and indivisibility of Nigeria.”²¹⁷

(2) It was also recommended that, “beyond the recitation of the National Pledge and the National Anthem, there is an urgent need for Nigerians to come to grips with the dynamics of their history”.²¹⁸

(3) It was clear to the Commission that,

“respect for human rights is a new concept in recent African political and social discourse” The Commission members therefore recommended that human rights education becomes fully integrated into the curricula of the military, police and other security personnel in the country”.²¹⁹

5.5.4 Expanding the political space ²²⁰

(1) The Commission recommended that the federal government and the state governments place a moratorium on the further creation of more states and more local government, and that such exercises were known to create more problems than they were designed to solve.²²¹

5.5.5 On religion and State ²²²

While the Commission members were of the view that Sharia is an integral part of their religion and customary law, the criminal mattered. The federal government was inclined to act to make Sharia conform to all the international legal obligations Nigeria has subscribed to, as pointed out in volumes 2 and 5 of this report.

²¹⁷ Ibid.64

²¹⁸ Ibid.

²¹⁹ Ibid.

²²⁰ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations.*

²²¹ Ibid. 65.

²²² *Oputa Commission, Synoptic Overview, Op.Cit.*

5.5.6 On the Nigerian military²²³

(1) “With effect from May 29, 1999, anyone who stages a coup must be brought to trial, no matter for how long and regardless of any decrees or laws they may have passed to shield themselves from future prosecution.”²²⁴(2) The armed forces should be pruned down to a manageable size, while they should also review their method of internal discipline”.²²⁵

5.6. Referred cases for further prosecution and adjudication²²⁶

(1) “The Commission forwarded the cases of Chief Alfred Rewane and Alhaja Kudirat Abiola to the Hon. Attorney-General of the Federation and Minister of Justice, who, in turn forwarded the files to the High Court of Lagos, where the cases are being prosecuted”.²²⁷

(2) “The Federal Government should open up the case of Dele Giwa for proper investigation”.²²⁸

(3) “The Federal Government should open up the case of Chief Moshood Abiola again for proper investigation in the public interest”.²²⁹

(4) “The Office of the Inspector-General of Police should be made to act expeditiously on the cases of murder that the Commission forwarded to it for further investigation”.²³⁰

5.6.1 Recommendations against the three former heads of state²³¹

1) On General Muhammadu Buhari,

i. *“the Commission is of the view that the General has a case*

²²³ Ibid.

²²⁴ Ibid.92

²²⁵ Ibid.

²²⁶ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations.*

²²⁷ Ibid.93.

²²⁸ Ibid.

²²⁹ Ibid.

²³⁰ Ibid.

²³¹ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations.*

*to answer in regard to the killing of three young men referred to in the petition brought by the Kenneth Owoh Family. There was overwhelming evidence to show that the execution of the three young men fell well outside the time frame allowed by the Decree under which they were tried. We therefore recommend that the General tender an unreserved apology to the families of the deceased. We equally hold accountable the Supreme Military Council of General Muhammadu Buhari that confirmed the brutal execution of the three young men. We therefore hold the then Supreme Military Council accountable”.*²³²

2) On General Ibrahim Babangida,

- i. *“we are of the view that there is evidence to suggest that he and the two security chiefs, Brigadier General Halilu Akilu and Col A.K.Togun are accountable for the death of Dele Giwa by letter bomb”.*²³³ *“We recommend that this case be re-opened for further investigation in the public interest”.*²³⁴

3) On the government of General Abdul salami Abubakar,

- i. *“the case against him had already been well argued by one of the witnesses, Col Idenhere, who testified in the case. Although, he was not directly mentioned in the death of Chief Abiola”,*²³⁵ *“the inconsistency in the testimony of his Chief Security Officer, Lt Col Aliyu, shows that the government of the day knows much more about the circumstances leading to the death of the Chief. We therefore recommend that that government is accountable.”*²³⁶

²³² Ibid. 88.

²³³ *“Giwa: Allegedly Killed By Babangida Goons”, Op.Cit. Also in ADEYEMO, W. (2006, August 28) “Cover Story”. Tell Magazine, 19-21,*

²³⁴ Ibid.

²³⁵ *“Abiola: Denied Electoral Victory By Ibb, Died in Controversial Circumstances”, Op.Cit. Also See ADEYEMO, W. (2006, August 28), Tell Magazine, 19-24.*

²³⁶ Ibid. 88-89.

- 4) “We recommend to the Federal Government that all the former Heads of State [who refused to appear before the Commission] be considered to have surrendered their rights to govern Nigeria and Nigerians at any other time in the future. It is left for Nigerians to judge”.²³⁷

It is clear from the above discussion that the Oputa Commission investigated a number of critical issues during the military regimes and arrived at detailed findings and recommendations. The Commission’s holistic efforts at uncovering the impunity of the era had the consequence of it being targeted by the military class in Nigeria. Similarly, the invitation and subsequent recommendations against the three former heads of state showed that there was no hiding place for those who abused human rights in Nigeria even though they were considered ‘the untouchables’. Indeed, recommendations on the atrocities, and impunity of military rule from 1966 to 1999, were heart-warming because much of the atrocities have been overlooked for many years amidst agitation and clamour for their prosecution.

The need for moral education and national conference were equally timely. The fact that the Commission had the mandate and leverage to invite the former heads of state explains the determination of the Commission to uncover past human rights violations in the country, and therefore the majority of Nigerians affirm that the Oputa Commission was the best dialogue Nigerians have had.

More importantly, the Commission’s work on the case of the killing of Dele Giwa by a letter bomb, the murder of Chief Abiola, and the extrajudicial execution of Owoh and three others were significant. The cry for the release and implementation of the Commission’s report by civil society groups, the clergy, and the populace indicated that the Oputa Commission was not an “unfinished job” and “it did not fail,” but suffered travails and predicaments in the quest for justice and truth for victims of

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human rights violations in the country.

5.7 Evaluation and impact of the Oputa Report

The work of the Oputa Commission had been succinctly examined by a number of scholars with varying results and findings, prominent among them Guaker (2009)²³⁸, Adeyemo (2013),²³⁹ Ikhariale (2008),²⁴⁰ and Yusuf (2007).²⁴¹ The question is, did the Oputa Commission fail? Was it an unfinished job? Was it the failure of the Obasanjo administration to release and implement the report for public consumption and make a judgment? Or was it the constitutionality of the Oputa Commission and the injunction of the Supreme Court against the Oputa Commission to release and implement the report? Could the presumed failure of the Commission be traced to the powerful influence of past authoritarian regimes and ethnicity?²⁴² These are critical questions that will guide our assessment of the Oputa Commission. This section evaluates the Oputa Commission and its impact on Nigerians and the nation in general.

As a building block, it is appropriate that this chapter takes a position on the work of the Oputa Commission and its impact on the public and the nation in general. The Oputa Commission itself was not a failure; rather, the Obasanjo administration failed to issue a contestable legal mandate that worked against the release and implementation of the report. A combination of factors worked against the Oputa Commission in its attempt to achieve truth and reconciliation.

The portrait of failure painted by some scholars against the Oputa Commission was not only elementary, but it was unjustified. This was because they over emphasized the mandate and terms of reference of the Commission

²³⁸ GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen.

²³⁹ ADEYEMO, D.D. (2013, October 28). *Transitional Justice After the Military Regimes in Nigeria*, Op.Cit.

²⁴⁰ IKHARIALE, M. 2008. *the Oputa Reports: An Unfinished Job*. Online <http://www.Nigerdeltacongress.Com/Oarticles/Oputa Reports.Htm>.

²⁴¹ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286.

²⁴² NNOLI, O., 1978. *Ethnic Politics in Nigeria*. Forth Dimension: Enugu; JIBO, M., GALADIMA, H. S. & SIMBINE, A.T., 2001. *Ethnic Groups And Conflicts in Nigeria: the Northcentral Zone of Nigeria*. *the Lord's Creation* 4, 63-87. Also See JOSEPH, R.A. *Democracy and Prebendal Politics in Nigeria*, Op.Cit.

without a holistic understanding of the systemic and institutional failure of decades' long military rule²⁴³ and autocratic impunity in Nigeria.²⁴⁴ Yusuf (2007), in "Travails of Truth: Achieving Justice for Victims of Impunity in Nigeria,"²⁴⁵ discussed about such impunity in chapter one. The authors also avoided the all-important theory that change was not only difficult but challenging.' Those are used to wielding power are more likely to resist change and progress at all costs and progress, even if that resistance would mean taking the entire society down. This is the predicament and travails²⁴⁶ of the Oputa Commission.

More worrisome are the views of some scholars who jostled between failure and adequacy of the mandate. For instance, Guaker noted that the Nigerian Commission received an extensive mandate, which asked the Commission to investigate and report on the nature and causes of all gross human rights violation committed between 15th of January and 28th of May 1999.²⁴⁷ At the same time, the author added that in theory a mandate of this nature was in Nwagwu's words "frightening", particularly because it opened up to the plausibility of retributive justice.²⁴⁸

What was the situation in Nigeria before the establishment of the Oputa Commission? Prior to its establishment, the Nigerian State was struggling with the challenges of ethnic politics and prolonged military rule, characterized by human rights violations, domination and authoritarian impunity.²⁴⁹ As Meredith (2011)

²⁴³ Details IN OJIAKO, J.O. 1980. *Thirteen Years of Military Rule*, Op.Cit. Also See SIOLLUN, M. 2009. *Oil, Politics and Violence*, Op.Cit.

²⁴⁴ in General Terms, Military Administrations Have Tended To See Military Tribunals As A More Effective Instrument For Enforcing Social Discipline and Achieving Economic Health. the Buhari Administration, Established Special Military Tribunals Under Decree No.3 of 1984, Called Recovery of Public Property Decree. the Babangida Administration Inherited Decree 3. Also See FALOLA, T., MAHADI, A., UHOMOIBHI, M., & ANYANWU, U. 1991. *History of Nigeria Vol.3, Nigeria in the 20th Century*. Ikeja: Longman Nigeria, 192.

²⁴⁵ Ibid.

²⁴⁶ YUSUF, H.O., 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. the *International Journal of Transitional Justice*, 1(2), 268-286.

²⁴⁷ Originally Quoted in YUSUF (2007:271) Cited in GUAKER, E. (2009) "A Qualitative Analysis of the Oputa Panel and the Factors Which Explain the Failure of the Commission," 1-51.

²⁴⁸ Quoted in GUÅKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed*. Master's Thesis, the University of Bergen.

²⁴⁹ MEREDITH, M. 2011. *the State of Africa: A History of the Continent*, Op.Cit. 574-580.

argued, “Thus forty years after independence, Nigeria presented a sorry spectacle. Wole Soyinka described his own country as the open sore of a continent”.²⁵⁰

If it was assumed in some quarters that the Oputa Commission failed because of its weak mandate, the question was how weak the mandate? Moreover, some scholars attributed the non-release and non-implementation of the report to the mandate and explained it within the purview of underfunding, the time frame, and the legal powers. These are peripheral arguments and not the main issues. “The Powers of the Commission are contained in Tribunals of Inquiry Act Cap 447 which is its enabling Law. That law is clearly the Panel’s Magna Carta”.²⁵¹

It was also constituted by Statutory Instrument No.8 of 1999 as amended by the Statutory Instrument of No. 13 of 1999 in the exercise of all powers conferred upon him by Section 1 of the Tribunals of Inquiry Act, 1990 ‘and all other powers enabling him on that behalf’”.²⁵² This meant that “the president constituted the Oputa Panel in exercise of the powers conferred on him not only by Section 1 of the Act, but also in the exercise of all other powers conferred upon him enabling him on that behalf. The latter include the executive powers vested on the President by virtue of Section 5 of the Constitution of the Federal Republic of Nigeria 1999”.²⁵³

Therefore, one can conclude that the Commission’s mandate had vested powers and was complete and robust. The failure to release and implement the report showed that the authoritarian regime still maintained a lot of influence on the political scene, and they were perceived to be the target of inquiry; in this case they ganged up against the Oputa Commission using the court’s narrow interpretation of the mandate.²⁵⁴ This chapter will attempt to establish the facts.

Firstly, it was the failure of political power on the part of Obasanjo’s

²⁵⁰ Quoted in MEREDITH, M. 2011. *the State of Africa*, Op.Cit.

²⁵¹ AKHIHIRO, P. 2001/2002. *the Constitutionality and Powers of the Human Rights Violation Investigations Commission (Oputa Panel)*, Vol.7, No.1, *University of Benin Law Journal*, 116-135.

²⁵² Also See YUSUF, H.O. 2007. *Travails of Truth: Achieving Justice*, Op.Cit Doi: 10.1093/ljtj/ljmo23, 268-286.

²⁵³ AKHIHIRO P. 2001/2002. *the Constitutionality and Powers of the Human Rights*, Op.Cit. 116-135.

²⁵⁴ Ibid.

administration to release and implement the report that limited the Commission's effectiveness. Secondly, the autocratic influence of past authoritarian regimes and their collaborators was still potent in the new democratic era. Thus, the Supreme Court of Nigeria acted as Pontius Pilate to nail down the Oputa Commission. It was a written script that the Supreme Court rehearsed, because of persistent institutional failure in silencing the Oputa Commission by declaring it unconstitutional and lacking in mandate.²⁵⁵ The Oputa Commission was an episode in the annals of Nigerian history, similar to colonialism²⁵⁶ that was seen in Obaro Ikime's (2012)²⁵⁷ edited work in chapter two and the Nigerian Civil War, that both attempted to bring about political and social change in society. These agencies of transformation were significant and historic in nature because they helped to shape social and political questions in relation to Nigeria and Nigerians. Thus, these agencies were never overlooked in any major discourse on Nigeria's political and social transformation and this was the position the Oputa Commission occupies in modern Nigeria.

The report of the Oputa Commission was in the archives²⁵⁸ but it continued to inform public hearings, national debate, and reconciliation of past human rights violations. What was the general assessment of the Commission's report and how had that assessment informed the people and the nation in general? According to Charles Oputa, son of Chukwudifu Oputa, "The Oputa Commission opened our eyes to all the atrocities of the past. It got people talking which was a good thing".²⁵⁹ In The Sun Newspaper 'Editorial' dated May 11, 2014, with the headline

²⁵⁵ YADUDU, A. (2005, April 5) "Conference Quick Take, Yadudu and Illegality," *the Punch Newspaper*, 8.

²⁵⁶ Details in COLEMAN, J.S. 1986. *Nigeria: Background To Nationalism*. Benin City: Ilupeju Press. Ltd. Also See TAMUNO, T.N. 2012. "British Colonial Administration in Nigeria in the 20th Century". in IKIME, O., ed. *Groundwork of Nigerian History*. Heinemann Publishers: Ibadan, 393-409.

²⁵⁷ Ibid.

²⁵⁸ in An Interview, Justice Chukwudifu Oputa Said: "There Was A Court Case, But I Don't Think Our People Took the Trouble To Know What the Court Decided. the Court Did Not Say That the Report Should Not Be Published. It Said That the Recommendations Against Certain People Should Not Be Implemented. the Report of the Commission Is Now in the Archives and Anyone Who Wants To See It Can Go and Make Photocopy of It". For More Details See OGUNWALE, G., & MOJEED, M. (2005, March 8) "Nothing Stops Government From Releasing the Report On Rights Abuses – Oputa", 1-2.

²⁵⁹ EZE, C. (2014, May 23) "Interview With Charles Oputa, After the death of His Father, Chukwudifu Oputa", *Daily Sun Newspaper*, 27-28.

“Chukwudifu Akunne Oputa: Exit of a Legal Icon,” the editor wrote:

The investigation of the Oputa Commission brought into the open some of the sordid deeds of past military dictators in the country, especially their abuse of power. The work of the panel also helped to achieve some measure of the reconciliation among aggrieved Nigerians. One useful lesson the Oputa investigative panel taught Nigerians is that the actions of our political leaders in office can still be questioned, even several years after leaving office.²⁶⁰

These assessments were profound because they illuminated the general overview of the work of the Commission. It also assisted the public in understanding the lessons from the Commission’s findings and recommendations. Beginning with the first question, did the Oputa Commission fail?²⁶¹ The answer was in the negative because it adhered to its mandate and terms of reference. These were the fulcrums upon which truth commissions revolved. Any attempt to exceed the mandate was perceived as arrogating powers of prosecution to itself; in that case it becomes the jury and prosecutor. The Oputa Commission did not tow this line but rather referred its findings and recommendations to government for further prosecution. While the designers of the Kenyan TJRC, and those who implemented its mandate, clearly learned from that mistake. There was also no question that the Kenyan Commission did not provide a strong counter example of how addressing violations of socioeconomic rights improves the ability of a society to move forward after a history of historical injustices and gross violations of human rights.²⁶² The Oputa Commission covered a lot of ground based on its

²⁶⁰ the Sunday Sun Editorial (2014, May 11) “Chukwudifu Akunne Oputa: Exit of A Legal Icon,” 11.

²⁶¹ ADEYEMO, D.D. 2013. *Transitional Justice After the Military Regimes in Nigeria*, Op.Cit. GUAKER, E. (2009) *A Study of Nigerian Truth Commission and Why It Failed*, Op.Cit.

²⁶² SLYE, C., 2017. *Putting the J into the TRC: Kenya's Truth Commission (March 8, 2017)*. Forthcoming in *Twenty Years On: Other Ways of Being and the South African Truth Reconciliation Commission*, Mia Swart and Karin van Marie eds. (Koninklijke Brill Publishing); Seattle University School of Law Research Paper No. 17-08. Available at SSRN: <https://ssrn.com/abstract=2929768>

mandate, contrary to public assumption. This is corroborated in the Chairman's comment:

"The Commission was of the view that there was need to go beyond the mandate, in search of pathways along which the project of nation building must proceed. This is more so, because the Commission is uniquely the best opportunity that Nigerians have had in several years to forge an informed understanding of their country's past and to put in place the necessary foundational building blocks on which a new Nigerian nation would rest".²⁶³

The main issues that impinged on the Commission's report rested on the fact that past authoritarian regimes were still powerful and influential in Nigeria's political space. They still occupied commanding heights and were consulted on critical issues of national importance by the new democratic regime. This gave them unlimited access to circulate and confer with the government of the day. For instance, Generals Buhari, Babangida, and Abdulsalami Abubakar were all indicted by the Commission's report, but in the election of 2007 General Buhari contested and lost, but in 2015 he contested the national election for presidency and won. Were Nigeria to have been a nation of conscious, with strong institutions, he would not have been cleared to contest the election because he had an issue with the State, including Abdul salami Abubakar, who acted as umpire and go-between in the election that returned Buhari to power as a democratic president in 2015. On the other hand, it showed that Obasanjo's administration had no political power to actualise the implementation of the report and this was why it has been consigned to the archives.²⁶⁴ As a consequence of this development, there was renewed agitation and clamour for a national conference,²⁶⁵ political reform

²⁶³ Oputa Commission Synoptic Overview of Human Rights Violation Investigation Commission Report: Conclusion and Recommendations, 7.

²⁶⁴ in An Interview, Justice Chukwudifu Oputa Said: "There Was A Court Case, But I Don't Think Our People Took the Trouble To Know What the Court Decided. the Court Did Not Say That the Report Should Not Be Published. It Said That the Recommendations Against Certain People Should Not Be Implemented. the Report of the Commission Is Now in the Archives and Anyone Who Wants To See It Can Go and Make Photocopy of It". For More Details See OGUNWALE, G., & MOJEED, M. (2005, March 8) "Nothing Stops Government From Releasing the Report On Rights Abuses – Oputa", 1-2.

²⁶⁵ As Emeka Anyaoku, Pointed Out in An Interview With Adeyemo, Wola: "Opinion Is Becoming Increasingly Widespread That There Is Need To Hold A National Conference To

review²⁶⁶, and regional government²⁶⁷ since the government refused to implement the Oputa Commission.

Thus, the Nigerian State became engulfed in more trouble than the period before the Oputa Commission. Violence, clamouring for succession,²⁶⁸ impunity, and extrajudicial killing by law enforcement agencies brought further insecurity.

Thus, This Day Newspaper dated March 5, 2003, with the headline “Disregard of Oputa Panel Report, Cause of Political Violence” noted that some Nigerians who petitioned the Human Rights Investigation Commission (popularly known as the Oputa Panel) over human rights violations had blamed the present state of political violence on the non-implementation of the Oputa Report.²⁶⁹ Reasons that were cited already in chapter one, indicated refusal by government to publish the report as reported by Kukah, a commission member, Yusuf (2007) blame of red tape.²⁷⁰

The impact of this development on the victims of human rights violations in the country was the total absence of justice, truth, and reconciliation. To date, the victims still clamour for compensation and reparation. The question therefore was how did the government respond to these agitations, since they were hamstrung by the court’s decision?

On February 21, 2005 the Obasanjo administration began indirectly implementing the recommendations of the Oputa Commission by inaugurating

Restructure the Federation Through the drafting of A New Constitution. See ADEYEMO, W. (2004, November 29) “in Search of A New Nigeria”. *Tell Magazine*, 22-23. Also See MOMOH, T. (2002, October, 20) “To Save Nigeria, Let’s Talk – Tony Momoh”. *the Sunday Punch*, 19-20; OLABISI, K. (2002, November 3) “Why We Must Talk Now”. *the Sunday Punch Newspaper*, 16-17; OYEBODE, O. (2002, November 2) “Only A National Conference Can Save Nigeria–Unpp Trustee”. *the Saturday Punch*, P17. AKANMODE, V. (2002, November 2) “National Conference Back On the Front Burner,” *the Saturday Punch Newspaper*, 13, 19.

²⁶⁶ SEMENNITARI, I. (2005, July 4) Cover Story, “the Way the Cookie Crumbles,” *Tell Magazine*, 20-26.

²⁶⁷ *Beko Ransome Kuti’s Interview With Akanbi Festus Reveals That, “We don’t Have What People Called True Federalism, Akin To What We Had in the 1960s. Then, We Had Regions. If We Can Have That Kind of Arrangement Now, Most of the Political Problems in the Country Would Be Effectively Solved”.* For More details See AKANBI, F. (2002, November 3). “We Must Return To Region,” *Sunday Punch Newspaper*, 14-15.

²⁶⁸ *the Punch Newspaper Editorial* (2002, November 4) “National Conference: A Clarion Call,” 1-2.

²⁶⁹ *This Day Newspaper* (2003, March 5) “Disregard of Oputa Panel Report, Cause of Political Violence”.

²⁷⁰ Ibid.

391 members of the National Political Reform Conference (NPRC) in Abuja.²⁷¹ The members feared that the report of the Oputa Commission would not be released, so they extracted assurances from government that the report would not be jettisoned into the archives²⁷² without implementation.²⁷³

Deep misgivings about the government's intention led to the inauguration of the Pro-National Conference (PRONACO) by opposition groups, which was led by Chief Anthony Enahoro.²⁷⁴ Unfortunately, the government undermined the process by appointing some of their members in the NPRC at the last minute. The NPRC was chaired by Justice Niki Tobi, a Supreme Court judge, and members included Justice Chukwudifu Oputa, Sunday Adewusi, a former Inspector of Police, Joseph Wayas, Professor Idachaba and John Wash Pam, to mention a few.²⁷⁵

Because of the fate suffered by the Oputa Commission, the Adviser to the President on Political Affairs, Professor Jerry Gana, "gave the assurance that the recommendations of the conference would be fully implemented".²⁷⁶ Yet, the NPRC produced its report and a new draft constitution to the government but could not assuage insurgency, ethnic agitations, and political lop-sidedness. The Punch Newspaper dated May 26, 2014 aptly corroborates this.

Some Nigerians are too angry at the country and would rather destroy it. What exactly is making them angry? Is [it] something we can assuage or redress? However, young Nigerians are trying to break out of this mould but when the harsh realities of the Nigerian

²⁷¹ UWUGIAREN, I. (2005, March 7) *"and the Jamboree Begins," Insider Weekly*, 25-26.
²⁷² in An Interview, Justice Chukwudifu Oputa Said: *"There Was A Court Case, But I Don't Think Our People Took the Trouble To Know What the Court Decided. the Court Did Not Say That the Report Should Not Be Published. It Said That the Recommendations Against Certain People Should Not Be Implemented. the Report of the Commission Is Now in the Archives and Anyone Who Wants To See It Can Go and Make Photocopy of It"*. For More Details See OGUNWALE, G., & MOJEED, M. (2005, March 8) *"Nothing Stops Government From Releasing the Report On Rights Abuses – Oputa"*, 1-2.

²⁷³ OLADIPO, D. (2005, March 8) *"Now At the Crossroads". the Punch Newspaper*.3.

²⁷⁴ MBAH, G., & ONWUDINJO, C. (2005, MARCH 7) *"Cover Story, Enahoro". Insider Weekly Newspaper*, 16-24. Also See AKINTUNDE, K. (2005, May 16) *"Recruiting For Parallel Conference". Tell Magazine*, 27-28; OKUROUNMU, F. (2002, October 19) *"A Call On Enahoro, Committee of Patriots, Others To Convene A National Conference Now, Without Waiting For Government, To Prepare A People's Constitution". Saturday Punch*,18; EZEIKE, J. (2006, June 19) *"Pronaco's Prolonged Labour". Tell Magazine*, 36-37.

²⁷⁵ MOJEED, M., & OGUNWALE, G. (2005, March 8) *"Don't Tamper With the Conference Report, Delegates Tell FG". the Punch Newspaper*, 1-2.

²⁷⁶ Ibid.

life confront them, they recoil to their shells. Essentially, the core issues we need to address include the structure and form of government, wealth creation and revenue sharing, devolution of powers, citizenship, residency rights, land use, policing, the role of religion in politics, and others.²⁷⁷

It was for this and other reasons that President Good Luck Ebele Jonathan in 2014 inaugurated another set of 400 members for a national conference in Abuja. It can be said of the NPRC, headed by Justice Niki Tobi that it also part of the recommendations of the Oputa Commission's report.

Other committee reports yet to be implemented include: the 1999 Constitution Review Committee chaired by Senator Ken. Nnamani; the Justice Eso Judicial Panel of Inquiry, recommended for implementation by the Oputa Commission; and the Pius Okigbo Report on the \$12.5 billion Gulf Oil windfall under President Badamosi Babangida's regime.²⁷⁸ It is for this reason that Ibim Semenitari called these reports 'A Conference of Hidden Agendas.'²⁷⁹ This was due to the effect of ethnic politics, hegemony and the struggle for resource control.

The success of the Oputa Commission can be located in its findings and recommendations. The report indicted the Babangida administration for some of his human rights violation and over alleged squandering of the oil windfall realized by the country during the Gulf War.

The panel also blamed his government for the murder of Dele Giwa in 1986 through a letter bomb. A lot of Nigerians still remember those events vividly and hold him with suspicion.²⁸⁰ Other issues trumped-up by the Oputa Commission that have been addressed include the five drivers of the economy, namely sector reform, infrastructure, macroeconomic stability, security and job creation.²⁸¹

²⁷⁷ ONYEKPERE, E. (2014, May 26) "National Confab, Insurgency and the Political Class". *the Punch Newspaper*, 28.

²⁷⁸ BALOGUN, F. (2005, March 8) "We Must Discus Without Fear," *the Punch Newspaper*, 15.

²⁷⁹ SEMENITARI, I. (2005, February 21) *Special Edition, Lead Story...* "A Conference of Hidden Agendas", [Print Media Missing] 65-69.

²⁸⁰ OJEWALE, O. (2005, September 5) "Hunting For the Heir Apparent". *Tell Magazine*, 21-22.

²⁸¹ OGBU, C., & OLANIYAN, A. (2002, October 17) "New National Economic Policy Out". *the Punch Newspaper*, 1-2, and 9.

5.8 Lessons of the Oputa Commission

The lessons of the Oputa Commission cannot be ignored in a detailed study of this nature. This was because of the manner in which the Nigerian public embraced the idea of a truth commission to resolve the myriad of issues on human rights violations and bring the perpetrators to justice. Nigerian people followed the programme on national television and other media outlets.²⁸² This chapter demonstrates that the Oputa Commission not only contributed to the political and social history of Nigeria but offered lessons on the existence and social integration of Nigeria.

The Oputa Commission first and foremost can be viewed as an episode in Nigeria's political and constitutional engineering. It can also be viewed from the prism of historical deep-rooted contradictions generated by conflict and cooperation among various peoples and social movements in the country, dating back to pre-colonial times.²⁸³ Fundamental to this study on that period were the works of Falola et al. (1989),²⁸⁴ Crowder, (1966),²⁸⁵ and Falola et al. (1991),²⁸⁶ Akpofure and Crowder (1966),²⁸⁷ Perham (1960),²⁸⁸ and Lugard (1922),²⁸⁹ as observed in chapter one and the following discussion on pre-colonial and post-colonial periods. The setting up of the Commission was an attempt to lay the groundwork for enduring and sustainable peace and development in the country, founded on the concepts and principles of human rights, equality, justice and reconciliation.²⁹⁰

What was the Oputa Commission set up to do? Inaugurated on 14th June 1999 by President Olusegun Obasanjo, the Commission was primarily established

²⁸² According To Chukwudifu Oputa, "We Carried the People Along With Us, and Everybody Followed the Happenings On TV and Radio". See Panorama, "Chukwudifu Oputa". *Tell Magazine* (2007, March 19), 10.

²⁸³ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit. Chapter 1, 19.

²⁸⁴ Ibid.

²⁸⁵ Ibid.

²⁸⁶ Ibid.

²⁸⁷ Ibid.

²⁸⁸ Ibid.

²⁸⁹ Ibid.

²⁹⁰ Ibid.

to investigate the causes, nature, and extent of gross violation of human rights in the country from 15th January 1966 to 28th May 1999. To determine the persons, authorities and institutions to be held culpable and their motives, as well as the effect of such gross violation on their victims, and to determine whether such violation was part of State policy, or the policy of its organs.²⁹¹ As an extension of the above, the mandate and terms of reference also capture the address of the President, which says to pursue a policy of openness and transparency in the conduct of government business. To “heal the wounds of the past...to put the ugly past behind [us], and to achieve complete reconciliation based on truth and knowledge of the truth in our land,” and to “reconcile the injured and seemingly injured with their oppressor or seeming oppressors”.²⁹²

Where did the Oputa Commission go wrong in its work? It is important to state, as has been pointed out elsewhere in this study, that the Oputa Commission fulfilled its terms of reference in its judgement.²⁹³ In trying to protect past authoritarian actions, the SC emphasised the individual rights of witnesses summoned, finding that the Commission infringed upon these rights,²⁹⁴ particularly in its attempt to compel witnesses to appear.²⁹⁵ It was gratifying to know that the Oputa Commission did its work meticulously and objectively by arriving at surprising decisions that informed its findings and recommendations.

This was also corroborated by Yusuf (2007): “The failure of the process derived not from the any major deficiency in the work of the Commission but largely from external factors, chiefly amongst which was a lack of sincerity on the part of the initiating regime”.²⁹⁶ Drawing on Guaker (2009), it was obvious that an affirmative government would actively pursue the implementation of the Commission’s recommendations, while less supportive governments on the other hand have been known to reject the Commission’s finds altogether and even

²⁹¹ Ibid.32

²⁹² Ibid.

²⁹³ AKHIHIERO, P. 2001/2002. *the Constitutionality and Powers of the Human Rights Violation Investigations Commission*, Op.Cit. 116-135.

²⁹⁴ Ibid.

²⁹⁵ YUSUF, H.O. 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*, Op.Cit.Doi: 10.1093/ljtj/ljmo23, 268-286.

²⁹⁶ Ibid.

refuse to release the report.²⁹⁷ The staggering revelations in the report, especially that of Dele Giwa, Chief MKO Abiola, Kudirat Abiola, wife of Chief MKO Abiola, who was murdered on the street of Lagos, including the extrajudicial killing of Shehu Yar'dua, Mr Owoh and three others, showed the Commission laboured to uncover the atrocities of past autocratic regimes in Nigeria.²⁹⁸ Other recommendations revolved around the annulment of the June 12, 1993 elections by the Babangida administration, the vexed issues of nation conference, constitution review and pruning of the military, which gave Nigerians the confidence to demand the release of the report of the Oputa Commission.²⁹⁹

The public hearings did not cover enough ground; out of about 10,000 petitions, it only attended to 250 petitions.³⁰⁰ This figure in itself was minimal because many victims of human rights violations were excluded from the Commission. It was an enduring lesson for Nigerians and perhaps nations in transition. This went to support the evidence that the Commission was grossly understaffed, as pointed out by some scholars, stakeholders, and civil society groups. It was also established that the Oputa Commission was not well equipped to extract truth from either the victims or perpetrators of human rights violations.³⁰¹ Yusuf's view is corroborated by the Commission, as follows:

“This is not to deny that public hearings are inherently problematic. For example, during our public hearings in Abuja, Lagos and Port Harcourt, alleged perpetrators of human rights violations blatantly denied the human rights violations and violations alleged against them by their victims and families. To this extent, it was not possible or easy to extract from some alleged perpetrators the measure of remorse and plea for forgiveness so vital for forgiveness and reconciliation to take place”.³⁰²

²⁹⁷ GUAKER, E. 2009. *A Study of the Nigerian Truth Commission*, Op.Cit.20.

²⁹⁸ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations.*

²⁹⁹ ADEYEMO, W. (2006, August 28) “Dele Giwa: Allegedly Killed By Babangida’s Security Goons”. *Tell Magazine*, 19-21.

³⁰⁰ YUSUF, H.O. 2007. *Travails of Truth*, Op.Cit.

³⁰¹ Ibid.

³⁰² *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit. Vol.1, Chapter 1, 6.

The Chairman also stressed that all was not lost, because public hearings still had their redemption. Thus, denials made no difference to the facts. When so many witnesses from different ethnic and geographical backgrounds allege unlawful arrest, illegal detention, and torture against the same set of persons or security agencies, such witnesses cannot all be lying, and the alleged perpetrators cannot all be witnesses of truth. In such situations, the Commission had to read between the lines.³⁰³ This is a lesson of morality and ethical restraint in the operations of Nigerian security agencies and those who abuse human rights.

The public hearings were compounded by a lack of interpreters and secretaries who could have efficiently transcribed witnesses' statements for the Commission. The challenges of office space and integration of the Oputa Commission into the Civil Service Commission brought to the fore the problems of public service, inadequate space for operations, and dedication to duty. It equally led to the issue of limited membership of the Commission because there were no top-notch officers.³⁰⁴ These challenges impinged on the Oputa Commission to achieve reconciliation, truth and justice. In all, the greatest challenge faced by the Oputa Commission was underfunding³⁰⁵ and lack of political will on the part of government.

The lesson of underfunding was palpable during the period, though most truth commissions had experienced financial constraints in the course of their work. For instance, the truth commissions of Uganda, Rwanda, Chile, Ghana and South Africa were no exception and perhaps this arose from the fact that transitional justice was expensive in nature, or that the governments that established them really had no interest in properly funding them. The Oputa Commission was therefore no exception, as it was known to have experienced shortage of monetary resources that would have effectively assisted its operations. The situation became worrisome when it was published in the media

³⁰³ Ibid.

³⁰⁴ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations.*

³⁰⁵ "A Keenly Awaited Report By Nigeria's Year-Long Human Rights Investigations Commission Has Been Delayed Because the Commission Has Run Out of Money," - *An Official Said On Wednesday. Details in This Day Newspaper*, January 10, 2002.

that the Commission was unable to pay the salaries of workers and travel expenses and the printing of draft reports.³⁰⁶

The lessons of the Oputa Commission for Nigerians cannot be ignored, particularly those who followed the proceedings on national television and radio.³⁰⁷ The revelations and confessions of victims on how their loved ones died at the hands of security operatives, including those left to die of bullet wounds including journalists,³⁰⁸ brought tears to the eyes of observers, panel members, and the audience.³⁰⁹ Also revealing was how victims of human rights violations confronted their abusers in the public domain, leaving them with smiles of contempt. Here they reminded them of their actions and heinous crimes against other victims who were with them in the same detention camp.³¹⁰ Others had the privilege of knowing how their loved ones had died in the hands of their oppressors.

The lessons and impact of the Oputa Commission were also visible in the settlement and reconciliation of warring communities such as the Maroko evictees,³¹¹ the Modakeke and Ife's long-standing feud, as well as Arewa and Ohaneze disagreements.³¹² More importantly was the invitation and summons of the three former heads of state, though they declined to appear. Nevertheless, the recommendations against them were still in the archives of history. This singular act, that the Oputa Commission had touched the untouchables, gladdened the hearts of Nigerians. It was this action that compelled the three former heads of state and their collaborators to seek judgment in court.³¹³

³⁰⁶ *This Day Newspaper* (2002, January 10) "Nigeria's Truth Commission Too Poor To Finish Work".

³⁰⁷ According To Chukwudifu Oputa, "We Carried the People Along With Us, and Everybody Followed the Happenings On Tv and Radio". See *Panorama*, "Chukwudifu Oputa". *Tell Magazine* (2007, March 19), 10.

³⁰⁸ Particularly the Family of Slain Journalist, Bagauda Kaltho of *Tell Magazine*.

³⁰⁹ Some of These Accounts Are Recorded in *Annual Report 1997, A Clo Report On the State of Human Rights in Nigeria*. Also See *Annual Report 1998, A Clo Report On the State of Human Rights in Nigeria*.

³¹⁰ Oral Interview With Jude Okonne, 65 Years, Activist, Lagos, 1/9/2017.

³¹¹ the *Guardian* Editorial (2000, April 25) "Rehabilitating the Maroko Evictees," the *Guardian Newspaper*, 20.

³¹² *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*.

³¹³ Section 308 of the 1999 Constitution of the Federal Republic of Nigeria, Which Provides Immunity For Certain Categories of Public Office Holders, Is Now A Subject of Court

If the report of the Oputa Commission was not a 'living document' and had no lessons, why did President Olusegun Obasanjo submit a copy to members of the Political Constitution Review and request they made it a part of the 'working papers' for the conference?³¹⁴ Why did the cleric request the president to release the recommendations of the Commission?³¹⁵ And why was the Oputa Commission seen as the best national dialogue ever had in Nigeria?³¹⁶ Nevertheless, these were impressive contributions by the Oputa Commission, and its quest for pan Nigerian agenda, reconciliation and justice for victims of human rights violations in Nigeria. At the national level, what did the Oputa Commission trump up, or how did it affect the Nigerian political space?

Would it have been possible for the Oputa Commission ensure justice through the provision of compensation and reparation? The answer laid in the affirmative because it would have alleviated the pain of victims, even though some victims claim it could not have done anything. The Afenifere socio-political-cultural group and Chief Ayo Adebajo, claimed that the Yoruba did not want any monetary compensation, but they requested a friendly meeting to solve all contentious issues in the polity, so they would not happen to any ethnic group whatsoever in the future.³¹⁷ Nevertheless, this chapter demonstrated that the position of the Oputa Commission, in relation to material and monetary compensation, was a huge lesson to be learnt because it watered down the zeal of victims.

The fact that the Commission rendered compensation and punishment, a neglected theme of its mandate,³¹⁸ made the Commission lose aspects of its

Litigation As Some Nigerians Are Seeking Constitutional and Legal Means To Terminate This Bulwark Against Transparency. Details in Director, O(2005, March 7) "Battle Against Immunity To Loot". Insider Weekly, 27. See Also This Day Newspaper (2002, June 13) "Why I Am in Court- IBB".

³¹⁴ AGBO, A., ORIMOLADE, A., BAKARE, I., & SALAMI, H. (2005, March 7) "President Has His Say". *Tell Magazine*, 28.

³¹⁵ *This Day Newspaper* (2002, September 15) "Catholic Bishops To Obasanjo: Publish Oputa Report Now".

³¹⁶ *This Day Newspaper* (2004, December 9) "Afenifere Wants Oputa Report Released". See Also *Independent Newspaper* (2004, December 11) "Fayemi of Cdd: We'll Publish Original Oputa Report".

³¹⁷ OLURUNNIMBE, F. (2001, November 15) "Achebe, Gowon, Odumakin and the Yoruba At the Oputa Commission". *This Day Newspaper*.

³¹⁸ *Oputa Commission, Synoptic Overview of hrvic Report: Conclusions and*

credibility, as compensation was paid elsewhere in South Africa, Guatemala, Chile, and Rwanda, where they drew their comparative analysis.

Ethnic sentiment made payment of compensation and punishment impossible because it was feared in some quarters that victims of the 1966 Nigerian Civil War,³¹⁹ predominantly Igbo and Hausa, would present themselves for compensation for what they suffered. As such the Commission's lean budget would be depleted in the face of complaints by victims of human rights violations, and in the face of the cry of government for money to execute its immediate projects. According to TELL Magazine dated July 18, 2005:

By 1999 when the democratic government of Olusegun Obasanjo took over, the nation's debt figures were an estimated \$27.09 billion. Despite loan repayments the debt continued to mount up to \$30 billion before the Paris Club reprieve. Much of this money, says Okonjo-Iweala, the then Minister of Finance, comes from penalties and interest. And all that the country has been paying off in real terms has been the interest, with the principal still intact.³²⁰

Records indicated that the majority of the petitioners who submitted petitions before the Oputa Commission and those that actually testified at the public hearings were emphatic on reparation for the abuse they suffered.³²¹ Most of the victims suffered untold hardship during unlawful detention,³²² torture as well as other unjustified human rights violation by the State Security Services (SSS).³²³ At the same time, victims lost their economic base and other sources of livelihood while in prison custody. Others suffered dementia and divorce.³²⁴ For

Recommendations.

³¹⁹ See SIOLLUN, M. 2009. *Oil, Politics and Violence*, Op.Cit. Also See OJIAKO, J.O. 1980. *Thirteen Years of Military Rule*, Op.Cit. TOYIN, F., UHOMOIBHI, F., MAHADI, A., & ANYANWU, U. *History of Nigeria, Volume 3, Nigeria in the 20th Century*. Ikeja: Longman Nigeria, 122-126.

³²⁰ SEMENITARI, I. (2005, July 18) "the Road Debt Relief". *Tell Magazine*, 40.

³²¹ NWANKWO, C. (2001, October 22) "Beyond the Oputa Rights Violation Panel". *the Punch*, 20.

³²² IFOWODO, O., ed., *Annual Report 1997 A CLO Report On the State of Human Rights in Nigeria*, Yaba: Civil Liberty Organisation Publication. Also See IFOWODO, O., ed. *Annual Report 1998. A CLO Report On the State of Human Rights in Nigeria*, Civil Liberty Organisation Publication: Lagos.

³²³ Ibid.

³²⁴ NWANKWO, C. (2001, October 22), "Beyond the Oputa Rights Violation Panel", Op.Cit.

instance, Chief Abiola was one of the richest Nigerians; he was involved in the media as the owner of the Concord Newspaper, Abiola Bookshop, Abiola Farms, Berec West Africa Ltd, producers of Berec Batteries and other businesses.

5.9 Truth – reconciliation and compensation

The Oputa Commission was primarily set up to pursue reconciliation and justice in Nigeria after many years of authoritarian regimes. One of the hardest things in conflict resolution and peace building, even in traditional society, was total reconciliation. Thus, the culture and spirit of wrestling bouts, festivals, solemn oaths, trade and marriages were employed between and among communities emerging from feuds as a guarantee of total peace during the period.

If the Oputa Commission had the objectives and mandate to pursue a policy of openness and transparency in the conduct of government business, heal the wounds of the past, achieve complete reconciliation and reconcile those seemingly injured with their oppressors³²⁵, how far did it progress in achieving these goals?

Achieving total reconciliation, truth and justice in a divided country was a herculean task. Especially when some groups believed that the country belonged to them and further, compounded by deceit and intrigue. The Oputa Commission aptly captured this:

Yet Petition No.1648 submitted to the Commission by Oha-na-eze Ndigbo and the responses to it by the Arewa Consultative Forum, the Joint Action Committee on the Middle Belt, the Afenifere, the South-South and the Government of Rivers State, Ogbakor-Ikwere Convention provide telling illustration of how divided we are as a country and of how suspicious and afraid we are of one another. What is clear from this is that the various ethno-communal groups in the country, including the major ones, complain of marginalization in the scheme of things.³²⁶

³²⁵ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*, Op.Cit. 32.

³²⁶ Ibid.10.

This cogently explained the predicament of Nigeria and the travails of leadership in an emerging democratic society. What do we make out of a situation where information generated through official conferences and panels on how the country can live in peace was gathering dust in the archives and shelves of various universities without its findings and recommendations being implemented? How then can we confidently articulate the work of the Oputa Commission and further explain its pursuit of total reconciliation?

According to some Maroko residents, genuine reconciliation was not possible in an atmosphere of lies, remorseless, and unrepentant attitudes towards those who suffer human rights violations.³²⁷ They contended that people's rights had been blatantly violated and concluded that genuine reconciliation must involve some form of restitution, "justice", and "adequate" compensation.³²⁸ On the other hand, the Afenifere group questioned how much compensation would be needed to address injustice and manipulation against the Yoruba ethnic group in Nigeria. Thus, records indicated that they never asked for compensation but instead truth and justice.³²⁹

Nevertheless, the Oputa Commission did its best within the scope of its mandate and terms of reference to pursue reconciliation. Some major achievements include reconciling the quarrelling communities of Maroko Village and Lagos State, the warring Ife and Modakeke communities in Osun State, where the people had to sign a Memorandum of Understanding and a Joint Declaration to live in peace and harmony, and to adopt a peaceful means of pursuing their respective rights and entitlements.

In the same vein, the Oputa Commission succeeded in brokering a Peace Accord among the warring factions and groups in Ogoni land, Rivers State. In particular, the Commission managed to unite and amalgamate the Ogoni Four and the Ogoni Nine into the Ogoni Thirteen. This was corroborated by the New

³²⁷ KNIGHT, E., 2002. *Facing the Past: Retrospective Justice As A Means To Promote Democracy in Nigeria*. Conn. L. Rev., 35, 867. See Also the *Guardian Editorial* (2000, April 25) "Rehabilitating the Maroko Evictees," the *Guardian Newspaper*, 20.

³²⁸ the *Guardian Editorial* (2000, April 25) "Rehabilitating the Maroko Evictees". the *Guardian Newspaper*, 20.

³²⁹ OLURUNNIMBE, F. (2001, November 15) "Achebe, Gowon, Odumakin and the Yoruba At the Oputa Commission". *This Day Newspaper*.

Nigerian Newspaper 'Editorial' dated February 16, 2001. "The Peace Accord signed by the warring factions in Ogoni land...will go down in the socio-political development of this country as one of the landmark achievements of the Human Rights Violation Investigation Commission".³³⁰

Another great achievement was the reconciliation of the embattled Umuleri and Aguleri communities in Anambra State. This was an age-long feud in which not less than ten thousand inhabitants and strangers had been killed. The state and federal governments in conjunction with the Boundary Commission had tried repeatedly to solve the problems but to no avail, due to the government's insincerity, until the Oputa Commission came on board. Therefore, was peace achieved and was the reconciliation effort of the Oputa Commission sustained thereafter? The answer was in the affirmative, but the Oputa Commission could not possibly attend to all petitions of other warring factions in Nigeria.

It was clear from the above discussion that the Oputa Commission achieved some element of reconciliation among warring communities in Nigeria. This success has made a lot of scholars acquiesce to the fact that the Commission would have achieved more if it had received adequate support from the government.

On the issue of compensation, some Nigerians thought that reconciliation could not be complete without compensation. Thus, victims of human rights violations and others had great expectations about how the Commission could help them financially, psychologically, and medically to overcome trauma.³³¹

In view of emerging reports and pressure for reparation and compensation for victims, the Commission clearly stated that it had no powers to pay them compensation directly, only to make recommendations. The Chairman reiterated:

"During the public hearings, it was observed that almost all petitioners wanted some form of compensation and/or reparation".³³²

What is more, he added, "we need to underscore the fact that no matter

³³⁰ *New Nigerian Newspaper* (2001, February 16). *Editorial*

³³¹ ANABA, E. (2001 August 15) "Why Oputa Commission Has Been Inactive". *Vanguard*, 11.

³³² *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations.*

how we may try, there can be no adequate compensation for life, but there is consolation when those in power or the perpetrators at least acknowledge the truth of the loss and sufferings of victims and their families”.³³³

The Chairman added:

“This attitude will facilitate both the process of national reconciliation and ensure the guarantee and protection of individual and communal rights of citizens. Following this, we recommend that all the presidents between 1966 and 1999 should apologise for all human rights violation that took place during their tenures. Failing this, the president should apologise on behalf of his fellow former heads of state”.³³⁴

The Commission indicted some past authoritarian heads of state, and perhaps their pride and identity would not give them the space to apologize, and so perhaps the president could do that for them. After all, he was complicit in the authoritarian regime that caused human rights violations in Nigeria. Records showed that payment of compensation was a mark of outright judgment and prosecution, thus the report stated that reparation and compensation are largely a consequence of the establishment of guilt and responsibility.³³⁵ The Commission’s public hearings, according to the draft report, were not victim hearings, as such. Thus, the issue of reparation and compensation became problematic. For example, there were ethical-philosophical questions, which we also needed to pose.³³⁶ What really constitutes compensation and how do you compute it? Was compensation such an important component in reconciliation? How much compensation is enough compensation? Who determines whether compensation meets the standards? Who sets the standards?³³⁷ How do you

³³³ Ibid.

³³⁴ *Opata Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations.*

³³⁵ Ibid.

³³⁶ *Chief Olusegun Obasanjo GCFR Submitted By Human Rights Violation Investigation Commission, May, 2002. Summary, Conclusions and Recommendations* (Accessed 5 May 2017)

³³⁷ Ibid.

compensate for life or injury (whether physical, psychological or structural)? How can you even quantify it?³³⁸

These questions, according to the Chairman of the Commission, “might on the surface sound escapist or abstract, but they are important if we are to take these concepts with the seriousness they deserve”.³³⁹ This volume of the draft report was important, even if it underscored the fact that in the final analysis, in determining arbitration and arriving at the knowledge of the truth, attribution of guilt, and admission of guilt are part and parcel of the compensation. Many sought and expected from a Commission of this nature.³⁴⁰

The above discussion had shown that compensation, reparation, and punishment were often drivers of the transitional justice mechanism. The absence of these factors made any truth commission an absurd gathering. The challenges faced by the Commission no doubt stand as a lesson to Nigerians in many ways.

First, the Oputa Commission encountered budgetary and infrastructural needs that affected its operations.³⁴¹ This was because it was underfunded by the government that established it, consequently it was unable to meet its obligations and staffing needs, particularly in administrative areas, personnel requirements, and organisational structure which greatly hampered its efficiency.

Second, there were misgivings about the efficacy of the Commission due to the absence of compensation, reparation, and punishment for victims and perpetrators.³⁴² These factors prevented many people from attending the proceedings, which invariably affected the audience watching on national television and other media. The effect of this development was the criticism of the Commission as a government’s model of truth to divert peoples’ attention away from reality.

Additionally, the pronouncement of the Supreme Court of Nigeria on the illegality of the Oputa Commission watered down the interests of the majority of

³³⁸ Oputa Commission, *Synoptic Overview of HRVIC Report: Conclusions and Recommendations*.

³³⁹ Ibid.

³⁴⁰ Ibid.

³⁴¹ *Report of the Human Rights Violation Investigation Commission, May, 2002 Summary, Conclusions and Recommendations* (Accessed 5 May 2017).

³⁴² ANABA, E. 2001, “Why Oputa Commission Has Been Inactive”, Op.Cit.

Nigerians and the SC supported its case on the grounds that the Nigerian Constitution had to make provision for a truth commission. This declaration of the court and attendant reactions of legal luminaries and civil liberty organisations dashed the hopes of Nigerians.

The questions Nigerians were asking included: what legal instrument(s) established the Commission and where was the Supreme Court of Nigeria to advise correctly on these important matters before the Commission was established? This showed how deep-seated Nigerian problems were, and how politically, socially and morally divisive the nation has been and still remains today. It was also indicative of the fact that the Oputa Commission was not the right model and no single theory of what a truth commission is meant to be can solve the nation's problems. Nevertheless, the Oputa Commission filled a very important gap in the transitional justice mechanism in Nigeria.

This chapter discovered that material and monetary assistance are not only prospective ideas but also a necessity, because they go a long way in alleviating the problems of victims of human rights violations. Many victims as well as survivors were in dire need of financial assistance to make ends meet, or even seek medical treatment for injuries sustained in custody.

Indeed, a few questions will illuminate our understanding here. Firstly, what lessons can nations emerging from conflicts and human rights violations learn from the Oputa Commission as a transitional justice mechanism? How can human rights violations be redressed when the Commission's report remains unpublished, despite agitations from the civil society and its affiliates?³⁴³ The clarion call, perhaps, was to avail Nigerians of the opportunity to digest the report, draw conclusions and move the nation forward.³⁴⁴ Secondly, does the nation, desirous of a model, have similar experiences with Nigeria in terms of

³⁴³ ODEREMI, K. (2005, January 2). "Reopen Deaths of MKO, Kudirat, Dele Giwa, Others: Oputa Panel's Report". *Sunday Punch*. Retrieved http://www.Nigerianmuse.Com/Nigeriawatch/Oputa/?U=Csf_On_Oputa_Report_01012005.Htm.

³⁴⁴ Centre For Democracy & Development (CDD) and the Umbrella Organization Civil Society Forum (CSF) Published the Report On the Internet; Oderemi, Kunle (2005, January 2) "Reopens Death of Mko Abiola, Dele Giwa, Others-Oputa Panel's Report". *Sunday Punch*; Olokojobiakibu (2004, December 11) "We Will Publish Original Oputa Report – Fayemi". *Independent*.

composition, ethnicity and prebendal politics? This is important because they contributed largely to the factors and forces that prevented the nation from achieving total reconciliation and truth.³⁴⁵

Thirdly, were the nation's problems rooted in a colonial strategy of divide and rule and did it suffer from transitional politics of the military and its coup culture? Additionally, to what extent was hegemony and interregional struggle for federal resources³⁴⁶ the bedrock of the nation's corruption and under development?³⁴⁷ These issues are critical to any nation trying to replicate the Oputa Commission, because it functioned along this paradigm, which helped stall the results and effects of the Commission's findings.

Symbolic reparation is one of the theories of the transitional justice mechanism. It has been exploited by a number of nations with varying outcomes. It is a veritable tool in not only assuaging victims, but in making their families eschew bitterness of revenge and further conflicts. It makes aggrieved parties believe that their efforts were not in vain, particularly when their names are engraved on monuments, their birthdays celebrated, or important streets and highways are named after them. Since the Oputa Commission suffered from paucity of funds to pay compensation and reparation, as pointed out by the Commission,³⁴⁸ it would have been ideal for the Commission to name important places, parks, public buildings, colleges and libraries after victims of human rights violations in remembrance of their collective suffering.

Symbolic reparation could take the form of celebrating and remembering victims' birthdays or deaths, as well as acknowledging those who died in the struggle.³⁴⁹ The need for government to recognize the sufferings of victims of past human rights violations is paramount because some of them paid the ultimate

³⁴⁵ YUSUF, H. 2007. *Travails of Truth*, Op.Cit.

³⁴⁶ NNOLI, O., 1978. *Ethnic Politics in Nigeria, Fourth Dimension: Enugu*. JIBO, M., GALADIMA, H. S. & SIMBINE, A.T., 2001. *Ethnic Groups And Conflicts in Nigeria: the Northcentral Zone of Nigeria. the Lord's Creation*.

³⁴⁷ MUMUNI, M. (2005, July 18) "Resource Control and the North". *Tell Magazine*, 20-28.

³⁴⁸ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*. Also See NWANKWO, C. (2001, October 22) "Beyond the Oputa Rights Violation Panel", *the Punch*, 20.

³⁴⁹ See O'DONNELL, G. et al. eds. *Transition From Authoritarian Rule: Tentative Conclusions About Uncertain Democracies*. Johns Hopkins University Press: Baltimore.

price with their lives. To mark their suffering, a national holiday could be declared. The naming of monuments (buildings) such as stadiums, halls³⁵⁰, hospitals, schools, bridges, and streets and road junctions is another appropriate form of remembrance. Unfortunately, the Oputa Commission overlooked this alternative means of peace building and transitional justice settlement.

It is therefore instructive that nations in transition should consider reparation, whether it is material, symbolic or monetary compensation. This would go a long way in alleviating the plight of victims of human rights violations. It is also imperative that outside help and assistance should be sought before, during and after a truth commission, since this wealth of experience would make a great difference in the Commission's quest for justice and reconciliation.

5.10 Oputa Commission and truth recovery

In every truth commission the questions of truth, recovery and total justice are never ending. This can be compounded by denial and lack of scientific evidence to arrive at the absolute truth and lies. However, the fact that total truth and justice cannot easily be extracted from victims and perpetrators does not mean that the work of a truth commission should be rendered useless, ignored or jettisoned. Distinguished scholars, such as Professors Ayodeji Olukoju and Akinyele Taiwo, are of the view that truth commissions are mere gatherings and the necessary instruments to recover truth are vital.³⁵¹ But when viewed from another perspective, according to them, truth is only one element, and not the entire work covered, so the overall efficacy of truth commissions is still intact.³⁵²

The Oputa Commission equally agreed that public hearings are inherently problematic. For example, in Abuja, Lagos and Port Harcourt, the perpetrators

³⁵⁰ *At the University of Lagos, Akoka, There Is the Moremi Hall Named After A Warrior of the Nineteenth Century, There Is the Okotie Eboh Road, Named After the First Indigenous Finance Minister Killed in 1966 Coup in Nigeria, There Is the Akintunde Ojo Library Named After His Struggle in "Ali Must Go Protest" Where He Was Shot Died At the Gate of the University of Lagos in 1977. in Contemporary Times There Is the Fawehinmi Gani Garden, Professor Awojobi Road, Fatai Atere Road and Others.*

³⁵¹ *Oral Interview With Professors Ayodeji Olukoju and Akinyele Taiwo, 60+, University of Lagos, 20 September 2017.*

³⁵² *Ibid.*

blatantly denied human rights abuse and violations alleged against them by victims and families. To this extent, the Commission admitted that it was not possible or easy to extract a measure of remorse or plea for forgiveness from alleged perpetrators so that reconciliation could take place. The Commission, however, reasoned that it believed the overwhelming evidence of many witnesses alleging violations of their human rights by the same set of persons or security agencies. In the words of the Commission “such witnesses cannot all be lying, and the alleged perpetrators cannot all be witnesses of truth. In such situations, the Commission had to read between the lines”.³⁵³

Therefore, depending on one’s position in this matter, the question of absolute truth cannot be too problematic. Truth was evident in the refusal of the three former heads of state to appear before the Oputa Commission. Rather than honouring the invitation to defend the cases against them, they headed for the courts. Before the Oputa Commission, Nigerians knew that Dele Giwa was killed by General Babangida’s administration. Nigerians also knew that Chief MKO Abiola did not die a natural death and so the quest for the case to be reopened is in order, and General Abdulsalami Abubakar and his administration must answer for it. Thus, ‘a general truth that is known to everyone is the absolute truth.’

5.11 Conclusion

The Oputa Commission was a stepping-stone in the attempt to settle the challenges of nation building in Nigeria. The Commission did a holistic job and revealed a mass of information hitherto unknown to Nigerians, though beset by institutional failure and the ambush of the Supreme Court judgment, which affected its implementation. Nevertheless, the Oputa Commission achieved a certain level of success, which benefited many Nigerians. Indeed, evidence showed that the new democratic government of Nigeria wanted to extricate itself from the odious records of military regimes, and thus had no time to investigate the workings of a truth commission and how it would impact on the victims of

³⁵³ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations, Op.Cit. Vol. 1. Chapter 1, 6.*

human rights violations without grievances. This development was probably due to the fact that the 'democratic born-again administration' was busy chasing recognition, internationalization, and geopolitics of the advanced countries that needed an ally in the pursuit of their goals in Africa. But more importantly, Obasanjo's administration wanted the whole world to know that the military had undergone probes and been brought to justice, and perhaps the load of sanctions would then be lifted.

The early stage of the Commission was fraught with teething problems, such as the resignation of some members for personal reasons, and the request for amendment to the terms of reference and mandate in order to give the Commission the necessary latitude and powers to operate.³⁵⁴ This indicated that the Oputa Commission was established in a hurry, and this partly hindered its success in achieving total justice and reconciliation. Nevertheless, it was clear from the lessons of the Oputa Commission that accountability for past human rights violations was difficult, especially embarking on the quest for truth and justice.

The lessons of the Oputa Commission are important in two ways. First, the effect of the Commission's work on the Nigerian people, and second, lessons learned for countries in transition or emerging from human rights violations. In the first instance, the investigation brought into the open some of the sordid deeds of past military dictators in the country, especially their abuse of power and impunity. The report confirmed already known facts about the deaths of Dele Giwa, MKO Abiola and Shehu Yar'dua, including the murder of Mr Owoh, and the three men executed by General Mohammed Buhari's administration.

Apart from the measure of reconciliation achieved among some warring communities, the Oputa Commission taught Nigerians that the actions of our political leaders in office could still be questioned even after the leaders have left office.³⁵⁵ It also shows that government can hide behind a court ruling, obtained by those who were indicted, not to release and implement the work of a truth

³⁵⁴ See KUKAH, M.H. 2011. *Witness To Justice: An Insider's Account of Nigeria's Truth Commission*. Book Craft Publishers: Ibadan. in *His Seminal Inside Account As A Member of the Oputa Commission, Kukah Described in Great Detail the Frustration Endured By the Commission in Delivering On Its Mandate*

³⁵⁵ *Sunday Sun Newspaper, May 11, 2014, 11.*

commission. Additionally, the fear that government might not release and implement the official report of a Panel or Commission, as happened in the case of the Oputa Commission, can discourage individuals from participating as members of a Panel or Commission.³⁵⁶

In sum, the report of the Oputa Commission was not officially released but some of the findings and recommendations were subsequently implemented. These include: the National Political Review Conference 2005, chaired by Justice Niki Tobi; President Good luck Jonathan National Conference of 2014; the Constitution Review Committee headed by Senator Ken Nnamani; job creation masterminded by the Nigerian Economic Summit; and pruning the armed forces.

The lessons of the Oputa Commission to nations in transition is also rewarding. It was noted that no one model is sacrosanct in view of the complexity of issues and the fact that local circumstances may be different and sometimes compounded by the history of the nation, its ethnic composition and political culture. These factors may defy attempts to subject the issues to a universally accepted set of rules. However, it is important and beneficial for a nation to exploit mixed models, or a combination of transitional justice mechanisms based on peculiar political and social problems. It is also pertinent that nations in transition should examine all aspects of the legal mandate to ensure it does not fall within the powers of the President of the country or the constitution of a nation, which affected the Oputa Commission.

This chapter noted that the Commission met all standards and criteria of a truth and reconciliation commission (TRC). It invited those who were high and low in status in society to take part. This singular act was commendable and a lesson to the Nigerian people and indeed nations emerging from conflict and human rights violations.

The work of the Commission is beneficial, even though it did not heal all the wounds of the past, because there was no reparation or compensation for victims of human rights violations, as happened in other countries. It achieved

³⁵⁶ *the Punch Newspaper, March 8, 2005, 3.*

some reconciliation among warring communities in Nigeria, such as the Maroko³⁵⁷ and Modakeke/ Ife conflicts and others.

This chapter therefore establishes the fact that a TRC must have compensatory benefits for victims of human rights to cushion their losses and some form of amnesty as an incentive for perpetrators to have confidence to reveal all that happened, including their partners in crime. This was what the Oputa Commission lacked in healing all wounds. This is a lesson to all nations in transition, that is, never repeat such a costly mistake in your quest for truth and justice.

The goal of restoring harmony was also a tall order as Nigerians still struggle for power, hegemony and resource control. The struggle for domination between northern and southern Nigeria has been aggravated since democratic rule was achieved in 1999. This is because of the absence of total truth and total reconciliation.

In modern times, the Igbo have been speedily calling for a declaration of independence for Biafra. It should be recalled that they seceded in 1966 leading to the Nigerian Civil War. All these events point to the fact that the Oputa Commission did not restore harmony to Nigerians and the Nigerian State.

In light of the above discussion, the Oputa Commission did its best within the prescribed mandate and objectives, but it was affected by the lack of political will on the part of government coupled with the Supreme Court injunction. Nevertheless, its goals in achieving unity and healing past abuse could not be totally successful. The Commission was not the right model for the inherent problems in Nigeria caused by hegemony, ethnic politics and authoritarian legacy. The country had long been under military rule and things were done with impunity and recklessness. Nations in transition that intend to draw analyses from Nigeria's truth commission must, as a matter of fact, examine their history, politics and ethnicity.

The Oputa Commission suffered many challenges, which should also serve as a lesson to countries in transition. These include paucity of funds, staffing

³⁵⁷ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations. Op. Cit.*

issues, compensation, and assistance from donor agencies and international organizations, to mention a few. This chapter establishes that blame should lie with Olusegun Obasanjo's government for its indifference to the Commission that ironically, he established.

The Commission was partly to blame for its inability to carry out a detailed background check on the workings of other truth commissions before it embarked on the project in Nigeria. The resultant effect was the absence of compensation for victims and punishment for perpetrators of human rights violations and the battle of the judiciary.

It also contributed to the absence of total truth and reconciliation in the work of the Commission because the report was neither released nor implemented.

CHAPTER SIX

CONCLUSION

6.1 Introduction

This study examined wide ranging political and human rights problems that have confronted Nigeria from colonial times and were exacerbated after the military incursion into governance in 1966. The research revealed that the period of military rule in Nigeria witnessed untold repression and gross violation of basic human rights of Nigerians.¹ The most reprehensible acts that occurred during the period under study were killings that indicated either direct involvement of or complicity by the State and its security agencies.² Therefore, the rule of the junta was categorised by subjugation of political opposition, civil society groups and the media. The military government and its security agents did not respect rule of law and due process but acted with impunity. The media were inundated with reports of people being harassed, detained without trial, tortured, extra-judicially murdered and sometimes forcibly displaced from their homes.³

The chapters of the thesis integrate the theoretical literature in the field of transitional justice to evaluate the available choices for countries emanating from a period of conflict or gross human rights violations. Particularly relevant in evaluating the work of the Oputa Commission were the analysis by Adeyemo (2013),⁴ Guaker

¹ See *Annual Human Rights Reports By Civil Liberties Organisation, Constitutional Rights Project, and Committee For the defence of Human Rights, Amnesty International, Human Rights Watch and the United States Department of State Annual Human Rights Report On Countries*. Also See ABIODUN, J.D., & IBANGA, M. E. 2011. *Human Rights Protection in Nigeria: From Rhetoric To Pragmatic Agenda*, *African Journal of Law and Criminology*, 1(2), 70-81.

² See *Annual Human Rights Reports By Civil Liberties Organisation, Constitutional Rights Project, Committee For the defence of Human Rights, Amnesty International, Human Rights Watch and the United States Department of State Annual Human Rights Report On Countries*; Human Rights Violation Investigation Commission (2002) *Draft Summary, Conclusions and Recommendation of the Human Rights Violation Investigation Commission*, May, Para. 101-103.

³ See *Annual Human Rights Reports By Civil Liberties Organisation, Constitutional Rights Project, and Committee For the defence of Human Rights, Amnesty International, Human Rights Watch and the United States Department of State Annual Human Rights Report On Countries*.

⁴ ADEYEMO, D.D. (2013, October 28). *Transitional Justice After the Military Regimes in*

(2009),⁵ Ikhariale (2008),⁶ Yusuf (2007),⁷ Akhihero (2001/2002)⁸ and Kukah (2011).⁹ The analysis provided clear insights on how these writers perceived the work of the Oputa Commission.

The research established how the violations by the military were aimed at perpetuating them in power. Ihonvbere posited that years of military rule, and a tradition of toying around with the political class without repercussions, have convinced many that there are really only two 'parties' in Nigeria: the military and the people. Because the soldiers command the bombs, tanks, guns, and bullets, at least legally and in larger quantities, they regard themselves as belonging to the superior party.¹⁰

The military endless transition politics reached its climax and unravelled under the regime of General Sani Abacha. The anti-democratic tendencies of his regime as well as gross violations of human rights provoked the demand for a 'truth' commission to investigate human rights violations under various military regimes. The need to deal with these series of events ultimately led to the establishment of the Oputa Commission. This thus is qualified by the statement on the role of military in the transition of Nigeria which goes, "It is part of the tragedy of Nigeria that when the military decided to intervene finally, it did not do so on the side of the electorate. Instead, it sided with those who voided the June 12, 1993 verdict. It sided with the anti-democratic cabal who had been holding the nation hostage for more than three

Nigeria: A Failed Attempt? A Research Paper Submitted in Partial Fulfilment of the Requirements For the Award of LLM Degree in Transitional Criminal Justice. , Op.Cit.1-103.

⁵ GUAKER, E., 2009. *A Study of the Nigerian Truth Commission and Why It Failed. Master Thesis in Comparative Politics. Institute of Comparative Politics, University of Bergen. , Op.Cit. 1-51.*

⁶ IKHARIALE, M., *the Oputa Reports: An Unfinished Job.* Online. [http://www.Nigerdeltacongress.Com/Oarticles/Oputa Reports.Htm](http://www.Nigerdeltacongress.Com/Oarticles/Oputa%20Reports.Htm). , Op.Cit 1-4.

⁷ YUSUF, H.O. 2007. "Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria," *the International Journal of Transitional Justice*, Vol.1, 2007, 268-286 Doi: 10.1093/ijtj/ljmo23. , Op.Cit.268-286.

⁸ AKHIHERO P., 2001/2002. *the Constitutionality and Powers of the Human Rights Violations Investigations Commission (Oputa Panel)*, Vol.7.No.1, University of Benin Law Journal, Op.Cit.116-135.

⁹ KUKAH, M.H., 2011. *Witness To Justice: An Insider's Account of Nigeria's Truth Commission.* Bookcraft. Op.Cit.

¹⁰ *Are Things Falling Apart? the Military and the Crisis of Democratisation in Nigeria. the Journal of Modern African Studies*, 34(2), 193-225.195.

decades”¹¹The study discussed in detail issues relating to human rights violation in Nigeria from colonial times, which was then exacerbated from 1966 to 1999 when the military was in power. The research focused on the issues of transition politics of various military regimes in Nigeria, and how they used corruption, suppression of dissenting voices and other forms of human rights violation to perpetuate themselves in power. The use of ethnic politics and religion to maintain hegemony of the Hausa/Fulani oligarchy over other ethnic nationalities was a major setback for Nigeria and has prevented the country from reaching its full potential. Therefore, this study, posits that Nigeria's ethno-nationalities, with the Ogoni and others in the oil-rich Niger Delta region taking the lead, are increasingly becoming critical sites of manifest and latent democratic struggle.¹²

The Oputa Commission was therefore established as a transitional justice mechanism to holistically look at human rights and political problems confronting Nigeria. The Commission's mandate was to heal the wounds of the past and set a road map for the beginning of a new Nigeria founded by the principles of respect for human rights and rule of law. An analysis of the work of the Commission revealed that despite its shortcomings the Commission was a laudable initiative and has paved the way for Nigeria to achieve the dreams of its founding father and reclaim its rightful place in the comity of nations. The study finally looked at the lessons of the Oputa Commission as a transitional justice mechanism¹³ to Nigerians, and perhaps nations emerging from conflict and human rights violations. This is remarkable considering the challenges of unity and national development that has continued to confront the Nigerian state.

The conclusion to the thesis outlined the main issues discussed in the work. It discusses the problems found with the process leading to the establishment of the Oputa Commission and how these deficiencies hampered the work of the Commission.¹⁴ It also contains recommendations that will foster the unity of the

¹¹ DARE, B, 'the New Inheritors', in *Tell (Lagos)*, 6 December 1993.

¹² AMUWO, A. 2009. *the Political Economy of Nigeria's Post-Military Elections, 1999–2007*. *Review of African Political Economy*, 36(119), 37-61.57.

¹³ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations*.

¹⁴ YUSUF, H. O. 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286.

Nigerian State, as well as the contribution to knowledge. It established the fact that the military, more than any other institution in the country, contributed to the decay of the Nigerian State.¹⁵ The military, it must be noted, found ready allies in political elites who collaborated with them at all times to truncate the Nigerian democracy.¹⁶ This is evident in the manner in which one regime after another sought politicians to work with them in government as ministers or political advisers.

Historically, the Oputa Commission was set up to investigate human rights violation in Nigeria from July 6, 1966 to May 28, 1999¹⁷. The Commission was simply an attempt to resolve the crisis committed by authoritarian regimes in Nigeria whose rule were characterised by gross violation of human rights, transition politics, impunity and domination. The Nigerian masses became disillusioned and helpless in their quest for democratic rule, justice and rule of law until civil liberty groups and affiliates decided to chase the military out of governance. The resistant of the people against the military elites was also backed by the European nations, which imposed sanctions on the country as a pressure to end military and human rights violations. As a consequence of these actions Nigeria became a pariah state, isolated in the comity of nations and the Nigerian economy tumbled into recession. Consequently, the insecurity that pervaded Nigerian society assumed a worrisome dimension, leading to the call for secession, war and regional autonomy. The Oputa Commission, in its findings, affirmed that General Abacha and his administration were accountable for the atrocities and human rights violations that took place during his tenure.¹⁸

On June 8, 1998 General Sani Abacha died in mysterious circumstances and the government of Nigeria was taken over by General Abdul salami Abubakar. The pressure from human rights and prodemocracy organisations, institutions and European nations forced the new regime to acquiesce to political transition and

¹⁵ EHWARIEME, W., 2011. *the Military Factor in Nigeria's Democratic Stability, 1999-2009. Armed Forces & Society*, 37(3), 494-511.

¹⁶ BIENEN, H., 1978. *Military Rule and Political Process: Nigerian Examples. Comparative Politics*, 10(2), 205-225.

¹⁷ WORIKA, I. L. (2001). *Deprivation, Despoliation and Destitution: Whither Environment and Human Rights in Nigeria's Niger Delta. Ilsa J. Int'l & Comp. L.*, 8, 1. 2.

¹⁸ NYTAGODIEN, R., & NEAL, A. 2004. *Collective Trauma, Apologies, and the Politics of Memory. Journal of Human Rights*, 3(4), 465-475.

further pledged to hand over power on May 29, 1999. It was during this period that eminent personalities worldwide converged in Abuja to work out the new political process and unconditional release of Chief MKO Abiola. His sudden death created ethnic problems, which led to the suggestion that a truth commission be instituted, similar to that of South Africa, Ghana, Rwanda, and Chile. This eventually culminated in the establishment of the Oputa Commission.

The thesis establishes the fact that the problems of the Nigerian State began with Arthur Richards' Constitution of 1947, which introduced regionalism, ethnic politics and hegemony¹⁹. Attempts by the nationalists to address this anomaly proved abortive because Nigeria was a colonial state under the British government. The politicians therefore resolved that the problems of Pax Britannica would be addressed after self-determination.²⁰ Unfortunately, the undemocratic attitude of politicians led to the emergence of military rule and the atrocities of authoritarian regimes. This situation subsequently brought the country to a standstill. The annulment of June 12, 1993 elections by the Ibrahim Babangida led administration, and the eventual takeover of Sani Abacha and his reign of terror made the situation even more complex.²¹

The Nigerian State was a victim and child of circumstance. It was not envisaged that Nigeria would exist as a federation. Thus, the people and the nation lost a pan Nigerian vision, or what Professor Akinyemi has called "Pax Nigeriana"²², capable of taking the country to enviable heights with a sustainable political culture. Pre-colonial culture endowed the regions with a sustainable political and socio-

¹⁹ MUSTAPHA, A. R. 2006. *Ethnic Structure, Inequality and Governance of the Public Sector in Nigeria*. United Nations Research Institute For Social Development.

²⁰ KASFIR, S. L. 2007. *African Art and the Colonial Encounter: Inventing A Global Commodity*. Indiana University Press: Bloomington.

²¹ AJAYI, K. 2007. *Election Administration in Nigeria and the Challenges of the 2007 Elections*. *the Social Sciences*, 2(2), 142-151.

²² *Pax Nigeriana Encapsulates Akinyemi's Discourse On the Attempts By Successive Nigerian Governments To Address National Problems, Most of Which Are Ethnic, Constitutional, Alleged Marginalisation, Persecution, Oppression, Fiscal Indiscipline, Boundary Conflicts and Agitation For State Creation Among Others*. Details in ZIMAKO, O. Z. 2012. "Pax Nigeriana: Akinyemi's Views On Nigeria's Status in World Affairs". in IMOBIGHE, T.A., & ALLI, W.O., eds., *Perspectives On Nigeria's National Politics and External Relations*, Op.Cit. 54-55.

economic way of life entirely different from one another, but adequate for social and economic integration.

It was further discovered that rather than achieve constitutional development, this led to ethnic agitation and hegemony that further introduced division, resource control and domination. The challenges of empire and exploitation made British crusaders ignore the suggestions of nationalists to balance the nation equitably to avoid conflicts and human rights violations. Unfortunately, constitutional problems dragged on till independence when politicians believe the crisis would be resolved at a round table, but that was not to be; rather it culminated in the population census and election crises of 1964.²³

As outlined in Chapter Two, the interplay of ethnic politics and religion had wide-ranging and far-reaching implications for Nigeria's political transition and emergent democracy. Without a balance of power between north and south, Nigeria as a nation was in for more trouble in future. It is therefore suggested that a sincere and holistic national dialogue to examine the political complexities of Nigeria and balance of power would be a way forward.

The chapter established the fact that various components of the Nigerian State would thrive better as a confederation or loose federation, as was the case in some advanced countries, since it was the attempt to rid the country of corruption, ethnic sentiment and power imbalance that led to military political incursion in 1966²⁴. The effect of the change from democratic rule to military administration meant stagnation of development for the nation. This stagnation was also accompanied by human rights violation and various atrocities, which eventually led to the Oputa Commission.

As outlined in Chapter Four the process that led to the establishment of the Oputa Commission was faulty.²⁵ The Obasanjo regime did not engage Nigerians in the transitional justice process.²⁶ There were serious issues with the law establishing

²³ LINDFORS, B. 1968. *Achebe's African Parable. Présence Africaine*, (2), 130-136.

²⁴ AGBESE, P. O., & UDOGU, E. I. 2005. *Taming of the Shrew: Civil-Military Politics in the Fourth Republic. Nigeria in the Twenty-First Century, Strategies For Political Stability and Peaceful Coexistence*.

²⁵ YUSUF, H. O. 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria. the International Journal of Transitional Justice*, 1(2), 268-286.

²⁶ DIKE, V. E. 2003. *Nigeria and the Politics of Unreason: A Study of the Obasanjo Regime*

the Commission, its appointment and funding. Despite these shortcomings the Commission worked to produce a report with laudable recommendations.

The Oputa Commission was a landmark in the history of Nigeria because it afforded victims of human rights violation the opportunity to confront their opponents in the public arena. And to some extent this brought home reconciliation and unity to warring communities in the country but attempts at reparation and compensation for victims of human rights violations proved abortive and this was part of the Commission's undoing.

The chapter observed that despite the daunting challenges of budgetary constraints and poor staffing, the Commission rose to the occasion and produced a report, which no doubt delivered a holistic review of the ugly legacies of military rule, responsible for gross violation of human rights.

Questions have been asked as to how much truth and reconciliation the Oputa Commission achieved. This debate in the quest for Nigeria's unity and development remains an ongoing dialogue; the Commission was an experiment in the right direction, but it left behind a legacy of information. The Oputa Commission affirmed that Nigeria's problems of nationhood could be traced to remote and immediate factors, which finally led to copious findings and recommendations to help victims of human rights violations in the country, but this was ignored by the government of Olusegun Obasanjo.²⁷

The Commission suggested symbolic reparation. This means there is a need for government to acknowledge the suffering of victims of past human rights violations, because some paid the supreme price with their lives. To recognise their worth and suffering, their birthdays or the day they died could be remembered as national holidays. Also, national monuments to immortalise them could be erected. Unfortunately, the Obasanjo's government jettisoned these ideas on the grounds that there was no money. This was due to the fact that with the number of retired military officers and their cronies still in political positions, Obasanjo felt that executing the recommendations would amount to threading on a risky pathway that

(3). Adonis & Abbey: London.

²⁷ ADEJUMOBI, S. 2001. *Guarding the Guardian? the Obasanjo Regime and Military Reform in Nigeria*. *Development Policy Management Network Bulletin*, 13(3), 17-19.

could tilt his young regime to nose-dive into the abyss of history. Thus, to maintain his grip on power, even at the cost of subverting justice for the vast majority, he looked the other way, while his benefactors utilized their access to political decision-making machinery to circumvent the implementation of the Commission's recommendations.²⁸ The study contended that the Obasanjo government jettisoned the work of the Commission for political reasons, since the Commission recommended punitive measures against powerful people in society, whom it indicted in its report and this is likely to vitiate the theory of amnesty and retributive justice granted to Abubakar's regime.

6.2 Findings

First, the study established that ethnic politics, hegemony and prolonged military rule were responsible for Nigeria going backwards.²⁹ Testimonies of senior military officers and those allegedly involved in coups shows that rich and powerful civilians were behind the military in destabilising the political transition process³⁰.

Second, this thesis demonstrates that the nature and impact of human rights violations during the extended period of authoritarian regimes were heinous, thus much was expected of civil society groups and affiliates to persuade the government to officially release the report and implement the recommendations of the Oputa Commission.

Third, the experience of Oputa Commission shows that government may set up a truth commission, but it does not necessarily follow that government would implement its recommendations. This is because political considerations far outweigh national interests. This means that an unfavourable report would not be implemented if politicians could not influence its contents.

²⁸ COLUMBUS, O. 2016. *Power and Good Governance: Observations From Nigeria. Melintas, Bangund, Indonesia*, 32(1), 1-22.12.

²⁹ JOSEPH, R. A. 2014. *Democracy and Prebendal Politics in Nigeria (Vol. 56)*. Cambridge University Press: Cambridge.

³⁰ ADEBANWI, W. 2011. *the Radical Press and Security Agencies in Nigeria: Beyond Hegemonic Polarities. African Studies Review*, 54(3), 45-69.

Fourth, past authoritarian regimes are still powerful and influential in Nigeria's political space because of their ill-acquired wealth which gives them tremendous power and authority.

Fifth, the Oputa Commission suffered a lot of challenges, which also serve as a lesson to countries in transition. These include paucity of funding, staffing, absence of a reparation programme the underfunding of the Commission by government impacted its efforts, so much so that the Commission was not able to carry out some of its functions.³¹

Sixth, though the Commission did not bring about absolute or total truth and reconciliation, it succeeded in revealing the complicity of the Nigerian State in past human rights violations; thus, it is safe to argue that the Oputa Commission was not a waste of time or a diversion by the government,³² otherwise civil society groups and well-meaning individuals would not be calling for the release the report.

Seventh, a truth and reconciliation commission must have compensatory benefits for victims of human rights to cushion their losses and some form of incentive for perpetrators to have confidence to reveal all that happened, including their partners in crime. This was what the Oputa Commission lacked, and this affected how much truth it was able to uncover.³³

Eighth, the study demonstrates that the Commission achieved an element of success in its mandate, particularly the cases of the Ohaneze and Arewa groups, Maroko and Lagos State, and Ife and Modakeke.³⁴ These were groups and communities that had long been on the path of conflict and efforts by past governments to reconcile them proved abortive until the coming of the Oputa Commission.

³¹ YUSUF, H. O. 2007. *Travails of Truth: Achieving Justice For Victims of Impunity in Nigeria*. *the International Journal of Transitional Justice*, 1(2), 268-286.

³² ONYEBGULA S. C. (2002, October 25) *Understanding the Oputa Commission, This Day Online, October 25, [Online] Available.*
<http://www.Thisdayonline.Com/Archive/2001/01/18/20010118com02.Html>.

³³ Ibid.

³⁴ *Oputa Commission, Synoptic Overview of HRVIC Report: Conclusions and Recommendations. Op. Cit.*

Ninth, the Obasanjo's administration, which inaugurated the Commission, should be blamed for the limited success achieved by the Oputa Commission. At the same time, the Commission was partly to blame for its inability to carry out detailed background discourse and adhere to the workings of other truth commissions before embarking on the project. This contributed to the absence of total truth and reconciliation in the work of the Oputa Commission.

Tenth, the Obasanjo government jettisoned the work of the Oputa Commission for political reasons, since the Commission recommended punitive measures against powerful people in society, whom it indicted in its report.

6.3 Recommendations

First, Nigeria should abandon ethnic politics and religion as a prelude to its development. It should expunge the provisions on religion and ethnicity from the Constitution. This is in line with what Kasfir argues when he stresses that, 'the most serious theoretical problem for most proponents of cultural pluralism and 'consociationalism' is their insistence that ethnic categories be treated as self-contained communities. Any useful concept of ethnicity must embody the possibility that situations evoking ethnic identity may stabilize over a period of time and may give birth to reinforcing institution.'³⁵

Second, military rule and human rights violations stagnated national development; therefore, a total ban on coup plotting should be entrenched in the Nigerian Constitution, as recommended by the Oputa Commission, since coups were aimed at wealth accumulation, corruption and human rights violations. The sole reason for such recommendation is because traditionally, the problem of the coup d'état has been viewed as a problem of political instability. Instability, whether manifested in institutional gridlock or mass protests, invites members of the ruling elite or military to supplant the government and take the reins of power in their own hands.³⁶

³⁵ KASFIR, N. 1979. *Explaining Ethnic Political Participation*. *World Politics*, 31(3), 365-388.

³⁶ MARINOV, N., & GOEMANS, H. 2014. *Coups and Democracy*. *British Journal of Political Science*, 44(4), 799-825. 5.

Third, the Oputa Commission as a transitional justice mechanism shows that nations in transition should adopt a transitional justice mechanism peculiar to its situation as no one model is sacrosanct for a nation in transition or conflict, rather a mixture of models should be exploited, as Shaw suggests too.³⁷

Fourth, civil society should mobilise national support to persuade the government to officially release the report and implement the recommendations of the Oputa Commission.

Fifth, Nigeria needs a sincere and holistic national conference to resolve the imbalance in political and socio-economic systems.

Sixth, the government should seriously consider conducting further investigations with respect to the Commissions far reaching findings. This is critical in cases where security agencies were implicated in unlawful deaths of Nigerians.

6.4 Contributions to knowledge

First, transitional justice methodologies can be used to uncover the atrocities and human rights violations of past authoritarian regimes.

Second, the efficacy of truth commissions in the resolution of conflicts and human rights violations is an important reconciliation mechanism; if there is political will on the part of government.

Third, nations in transition must first examine the dynamics of their history, and political and social culture before embarking on any form of transitional justice. This will enable them to achieve truth and reconciliation because truth commissions are a challenging task, often compounded by denial, total justice, compensation, and amnesty.

Fourth, the Nigerian military brought about corruption and human rights violation in the country; there is therefore the need to strengthen all institutions to enable the country to move forward without the ambush of the courts.

³⁷ SHAW, R. 2007. *Memory Frictions: Localizing the Truth and Reconciliation Commission in Sierra Leone. the International Journal of Transitional Justice*, 1(2), 183-207.

Fifth, a sincere national conference is needed more than ever before in Nigeria to address ethnic politics, hegemony and resource control.

6.5 Lessons learnt

Lessons learnt from the Oputa Commission are many.

First, the fact that a government can establish a truth commission does not necessarily mean it will implement the findings and recommendations, unless civil society groups and human rights organisations mount pressure on the government to release and implement such a report.

Second, a truth and reconciliation commission (TRC), such as the Oputa Commission, could be inaugurated by government but allowed to die in the middle of its work for lack of political will and financial constraints.

Third, a TRC could also be set up on political grounds, to divert attention from pressing issues of governance. The Oputa Commission suffered these challenges in its quest to address human rights violations and atrocities of military rule in Nigeria.

Fourth, funding a TRC is one of the most important factors in achieving success. The challenges of most commissions lie in shortage of funds, and this was one of the recurring problems faced by the Oputa Commission. Perhaps the government did not have any idea that the work of such a Commission was capital intensive, and even when it became clear that the government must commit large sums of money if it wanted an effective truth commission, the Nigerian Government refused on the grounds of paucity of funds and poor economy. Thus, the rhetoric of lack of funds became a recurring issue throughout the life of the Oputa Commission.

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